AMENDING THE HOMESTEAD LAWS

HEARINGS

BEFORE THE

COMMITTEE ON THE PUBLIC LANDS

HOUSE OF REPRESENTATIVES

ON VARIOUS BILLS PROPOSING AMENDMENTS TO THE HOMESTEAD LAWS

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AMENDING THE HOMESTEAD LAWS.

COMMITTEE ON THE PUBLIC LANDS,
Washington, D. C., January 31, 1912.

The committee met at 10.30 o'clock a. m., Hon. Edward T. Taylor (acting chairman) presiding.

The ACTING CHAIRMAN. Mr. Secretary, the other day the committee inquired as to whether or not any bills had been introduced looking toward the carrying out of the recommendations of the Secretary of the Interior on the subject of homestead matters, and it seemed to be the judgment of the committee at that time that it would be orderly and systematic to have a conference with you, if we could, to determine what would be the orderly and effective policy to pursue at this session of Congress in regard to a number of homestead matters. There are something like 25 or 30 bills asking for relief of various kinds before this committee now, and it was deemed impracticable to take up the consideration of each one of them, and that the proper way would be to concentrate our efforts on some feasible measures that would, if possible, harmonize our sentiments with the Department of the Interior and at least try to get together on a few of the more important matters and concentrate our energies on those matters, eliminating those of minor importance, and thus not wasting the time of the committee or the time of your office.

The object of this meeting is a general conference. We would like to get your views and give you an opportunity to state them as fully as you feel like doing within the limited time at the disposal of the committee. Wednesday is what we call Calendar Wednesday, and we usually try to adjourn about 12 o'clock. If any member of the committee desires to make any statement, I would be pleased if he would do so now.

Mr. RAKER. We had one particular bill under consideration, and it appears that some of the gentlemen of the committee are of the opinion that the department has by rule, or by some opinion, rendered nugatory or inoperative a law passed recently by Congress.

The ACTING CHAIRMAN. Judge Kinkead asked us to consider his bill, providing that the first six months after the filing of the homestead claim should not be charged up against the claimant in his absence therefrom, and that the practice heretofore prevailing should be enacted into law and that he should only be asked to live four and a half years upon the land. That was the bill under consideration at that time, and as there are several of these same bills here and many others, we thought, before acting upon them, to ask for this conference.

Mr. MONDELL. I introduced a bill of the same tenor and effect on which a subcommittee was appointed.

The ACTING CHAIRMAN. There are a number of bills here along the same line.

Mr. KINKEAD. My bill is No. 16583.

The ACTING CHAIRMAN. That is one of the various matters we would like to have the Secretary express his views upon.

Mr. MONDELL. The Secretary's office has recently ruled that the entryman is not entitled to have the first six months after he makes his entry considered as a period of constructive residence. It has been so considered for many years, and as the Secretary has made some recommendations along that line in his annual report I suggest that the Secretary give us his views, at such length as he may see fit, upon that particular question as an opening.

Hon. WALTER L. FISHER (Secretary of the Interior). Mr. Chairman and gentlemen of the committee, I have no hesitancy in discussing this entire general subject candidly and as fully as it is possible under the very short notice I received. I want it understood, however, that the views I express are expressed on very short notice and are subject to modification at any time without notice.

I am very deeply interested in the whole question of the public-land laws. I would like to cooperate with you gentlemen to the very limit of my ability to make those laws promote proper development in the West and wherever there is public land of any kind. I conceive that proper development is a very essential matter, and, in fact, unless the development is proper it is not going to be real development at all; that if we allow the public domain to pass into the hands of individual claimants—private owners—and those private owners do not themselves intend to reside on and cultivate the ground, that all we have done has been to add an additional and wholly unnecessary burden to the man who is going to live on and cultivate that land, because the private owner, who obtains the land in that way, obtaining it simply for profit, will attempt to make that profit out of the real settler to whom he expects to sell. I think that will retard development and will be a direct and unqualified injury to the public land. On the other hand, I think that every restriction that we have now embodied in public-land laws, or that we embody in laws hereafter, which is unnecessary and which adds a burden that is not necessary to insure real settlement and real development, is just that much of an obstacle to the proper development of the country. And the difficulty is to draw the line between these two extremes.

The Department of the Interior must, of course, construe the law as it is on the statute books, and as long as I am Secretary that is going to be the rule to the limit of my ability. Congress may pass some laws which are, in my opinion, unduly lax, but I am going to enforce them if they are passed or if they are now on the statute books. Congress may have passed some laws in the past, or may pass some in the future, which, in my opinion, are unduly strict, but I am going to enforce them as they are, and it is along this line that you have asked my particular attention.

It is perfectly true that the department has heretofore, for a considerable period of time, construed the homestead law so as to give the entryman the benefit of the first six months after he makes his entry as a portion of the five-year period, without regard to whether he has, in fact, lived on the land or not. When that question came up before Assistant Secretary Adams he examined the law and the statute to see whether that practice was correct. He is a first-class

lawyer and has had a very wide experience in regard to public lands and land titles generally, and he came to the conclusion that the statute as it stands was not susceptible of the the construction that was put upon it by the department; that, as a matter of fact, while the law permitted the entryman to be away from the land six months after the entry, and did not authorize or permit the department to cancel his entry on that account, it in express language provided he must live on the land for the full period of five years.

Mr. Mondell called my attention to the rule and to the practice of the department that prevailed heretofore, being of the opinion that the four years' and a half residence, if it was an actual residence, and if it was accompanied by an actual cultivation of the ground, so that it could be said properly of the entryman that he was a real settler who had demonstrated his good faith in that regard—would be a sufficient requirement for Congress to put in the law. I examined it with a view of seeing whether or not it would be proper to modify the First Assistant Secretary's ruling or to call the matter again to his attention, so that he might reconsider. I confess that, after examining the matter for some time, I was unable to reach that conclusion. I think the practice which has heretofore prevailed in the department was an undue stretch of the statute as it reads. I don't believe it is authorized by the act. If Congress is going to stop with the amendment of the homestead law in that one particular, or if that is the only change which is going to be made with regard to the matter of residence and cultivation, I personally would be in favor of the bill giving to the settlers—certainly to the settler who has heretofore made his entry under the old practice—the benefit of that six months or reduce the requirement of five years to four years and a half.

I hope Congrses will go a great deal further than that and make some other changes in the law. I have expressed the conviction in my annual report—and the more I have considered the matter the more firm that conviction is—that all of the public-land States will be benefited immeasurably if we will frankly adopt the principle of classifying the public domain and then provide a method of disposing of each class according to the nature of that class. If we can stop selling timber lands or disposing of timber lands under homestead laws, I think we can make a great gain. If we can stop selling mineral, gas, and oil lands under homestead laws, or any other form of law that is not adapted to that particular sort of land, I think we will make an immeasurable gain. If we could classify the public domain so that, when a man makes an entry in section so and so, all that it is necessary to do is to look at the classification and find out whether he has applied under the law applicable to that classification, I think that would be a great gain. We would be able to reduce this delay and difficulty arising out of the necessity for special agents making examinations and reports that now clog the wheels of the Department of the Interior. We could get action in a very negligible fraction of the time that is now absolutely necessary. Not only that, but we would get land disposed of as it ought to be disposed of. Take oil and gas land—oil land, especially—we have the right to withdraw oil land from entry for purposes of classification. The general provision is probably ample, but when we get it classified we have no law under which we can dispose of it, except to re-

store it to general entry under the homestead law or under the mining law or other laws absolutely inappropriate.

Mr. MONDELL. We have a law on the statute books for the entry of oil lands.

Secretary FISHER. Under which we can dispose of it?

Mr. MONDELL. Yes, sir.

Secretary FISHER. To pass a law that you refer to is, in my opinion, absurd.

Mr. MONDELL. But, Mr. Secretary, I think you began your statement with the assurance that it was your thought—your duty—to enforce the laws as they are.

Secretary FISHER. That is prefectly true. Let me say this, Mr. Mondell: Wherever the law vests in me discretion I believe that discretion can be exercised one way or the other in the public interest, if you are going to exercise that discretion to the absolute limit, whether that law is withholding the entry or restoring the entry, disposing of restrictions, or the contrary. Where the law is mandatory and explicit, I expect to follow it; but to the limit of the law making it discretionary I expect to exercise that discretion. In that connection I may call your attention to the fact that there has recently been a lot of talk about the Canadian homestead law. The Canadian homestead law is built upon discretion. The homesteader under the Canadian law has to use that degree of cultivation which the minister requires, and the requirements and regulations prescribe the degree of cultivation the location or character of land requires. So it is with their mining law and the whole general administration. It is an administrative theory that prevals in Canada.

Mr. MONDELL. Within certain well-defined limitations.

Secretary FISHER. Not at all; within the very broadest limitations.

Mr. MONDELL. But well defined?

Secretary FISHER. But not defined in the statute. Let us take, for instance, the question of minerals. Instead of fussing around with regard to whether a tract of land has coal or whether it has other mineral in it, the homesteader gets a patent, but reserving to the Government all mineral, whether it is there or not. That is the only kind of a patent he can get. They talk about how quickly they can get action in Canada and compare that with the system here, absolutely ignoring the fact that under the Canadian system speedy action is provided for. The homesteader there, instead of waiting until the classification is made, applies for his patent and gets it with the mineral reservation. Give us that method in the law in the United States and we can cut down the delays immeasurably in all the public-land States.

Mr. MONDELL. Does their statute provide for an examination to see if a certain mineral exists after the man has waived his claim to it?

Secretary FISHER. Oh, no. If a man clearly waives his claim he is entitled to his patent at once, provided there is no other objection. If that was the only question involved he would have his patent at once. We have had difficulty because we have had two laws, and the question has been whether the later law repealed the former law. Under the one act there is no specific language, and it is like some other acts of Congress—it is left to the law department to try to work out some method of adjusting these conflicting statutes.

Mr. MONDELL. What statute do you refer to?

Secretary FISHER. I refer to the withdrawn lands. The question is whether or not the entryman files his relinquishment and says, "I hereby apply for a surface patent, exclusive of all mineral reserved under the law of 1909." You understand the situation. The entryman has his attention directed to the act of 1909, and says he will take the surface patent subject to whatever mineral rights there may be under withdrawals under the act of 1909. The law department says, "Hold on; here is the act of 1910"; and under the first examination made by the First Assistant Secretary of the Interior, as I recall it, he reached the opinion that the act of 1910 was, in effect, a repeal of the act of 1909. He went further than that, as I recall it. We will illustrate: The Government makes the withdrawal under the act of 1910, the later act. The entryman says, "I relinquish under the act of 1909." When it comes up the question is whether or not the Government can give him a patent of that kind, because the land was not withdrawn under the act of 1909, but under the act of 1910. That led to an examination of the law, which was natural. It was not because we could not decide the case very quickly, but we are going to establish a precedent, and there may be many cases come in of the same sort, and so it leads to delay.

Suppose we had the Canadian law? All the entryman got was the rights in the land, except the mineral—that is, the land title—except the mineral contents.

Mr. MONDELL. What we gave him under the law of 1909 is the fee title, except the coal?

Secretary FISHER. Yes; but the difference is this. We don't give that. There is an examination made to determine whether there is or is not coal in the land. The Canadian law waits for no examination. The entryman gets his patent, reserving to the Government all the mineral, if there is any mineral there. That leads to prompt administrative action. He doesn't have to wait for anything. You don't have to fuss around about the question or have a geological survey or any other agency examine whether there is coal on the land. The entryman takes his patent, with the mineral reservation, and that is the prime reason why the Canadian law leads to prompt administration. Here with us, we have entered, under the homestead law, timberland, land containing large trees growing close together. The question comes up to the Department of the Interior as to the construction of the law, especially on the question of cultivation, with the arguments put forward by the entryman, who says he could cultivate only a little part of the land; that the ground was covered with trees that he had to remove, and that if he cultivates an acre of the ground he is doing quite well. Under those circumstances the department's ruling in regard to cultivation is sought, and sometimes the entryman, who is not acting in good faith on the cultivation side, at least, as to the requirements of cultivation, comes in, and he has a little patch of ground 10 feet square or 50 feet square or more, and that is the only cultivation that he has done, and he wants to have that passed under the homestead law. What we do, as we have done in the past, is to construe these things as they come up, trying to adapt the situation to the facts without any statute under which we can do it.

Mr. MONDELL. As a matter of fact, does not our law with regard to cultivation leave the department in exactly the same position as you

say the Canadian law leaves the Canadian Government, with full power to determine what, under certain conditions, constitutes sufficient cultivation?

Secretary FISHER. No; it does not. In my opinion, if the homestead law were now up for construction the first time we would have to require the entryman to cultivate the whole tract. The law says he shall reside on or cultivate "the same" for a period of five years. He shall cultivate "the same"—the same is the tract—and it doesn't mean 1 acre of the 160 acres entered, but it means 160 acres. That is the law as it reads, and if it had not been construed, and not only construed but amended by other acts of Congress, I think we would have been in all manner of difficulty.

Mr. MONDELL. It certainly leaves you with full power to determine what constitutes sufficient residence.

Secretary FISHER. Yes; that kind of arbitrary power of which you and others complain when we exercise it.

Mr. MONDELL. But I understood you approved of that in the Canadian law?

Secretary FISHER. I approve the Canadian law, which says, in so many words, that it shall be the kind of cultivation and the extent of cultivation which the minister requires. We have no language like that in our act. Take, for instance, this bill which is pending now, that has been reported out of the Senate committee—now pending over there, introduced by Senator Borah, with amendments by Senator Jones, or the reverse—I do not know who introduced the main bill, but Senator Jones desires to permit the entryman to be absent from his tract of land six months in each year and has a bill to that effect. Senator Borah, being impressed with the benefits of the Canadian law, has a bill reducing the homestead period from five to three years. The committee of the Senate puts the two bills together and reports it out, so if that bill were passed the 5-year homestead bill is changed to an 18-months homestead law—no other change in the law. You know and I know that if such a law as that passed that every precedent that had been established by the department in the past of permitting 1 acre of cultivation, or less than an acre—and there were thousands of entries passed with less than 20 acres out of 160—that every one of those precedents will be brought up in the department and will be urged on the department as binding under it, under the 18-months homestead law, with the result that we would have more fraud and the necessity for more investigation by special agents than exists for all the coal claims in Alaska.

The ACTING CHAIRMAN. I think there is another bill of that sort before this committee.

Secretary FISHER. I think both bills are there; I do not think you have acted on them. You will find the Borah bill or a bill of that character.

The ACTING CHAIRMAN. Those are all here. Mr. Secretary, I would like to ask you to state your reasons for recommending in your annual report that the first two years of the five required for residence be excluded rather than allowing a three-year homestead law, as Senator Borah has started out to do?

Secretary FISHER. I was going to discuss that. When I was out in the West, and from what I have gathered from my experience involving western lands, I have been particularly impressed with the

claim made by many settlers that the requirement of residence during the first year and the first two years was a hardship which seemed to them unnecessary. During the past summer I have traveled twelve thousand and odd miles in this country alone, through the Northwest, not counting the trip to Alaska, visiting the land offices, Indian offices, etc., in the short period of time I had available after the special session. Everywhere I met with that suggestion. It appealed to me very strongly.

Mr. MONDELL. Did you hear anything particularly with regard to the reclamation entries?

Secretary FISHER. Yes, I did. I think the matter was brought up more especially with regard to reclamation entries. They urged there that with the reclamation project, even after the question of water had been disposed of, after the sagebrush had been cleared away, or whatever other desert growth there was, and the land had been graded and fenced and their houses and outbuildings built, that it was, as a rule, impossible to make any profit out of the land during the first year and that that was frequently the case during the second year. I saw a great deal of irrigated land where I was told by the settlers the proper way of cultivation was to plant alfalfa and to have, if possible, two years' cultivation; to have the second year, at least, under alfalfa before they put it into sugar beets or fruit trees, or whatever other use there was for which the land was best adapted; that it ought to have a couple of years under alfalfa, and I saw a great deal of that kind of land. A lot of these people came and talked to me and said, "We started in with so much capital and we built a little house and fenced in and cleared the land, and we were left strapped at the end of the first or the second year. If there is a bad crop or a bad season it was very serious to us. If we could be away from here during those first two years and employ men to put it under cultivation and build outhouses, and then be prepared to take up our actual residence at the end of the second year, we would be a great deal better off."

That appealed to me very strongly. I thought then, and I still think, that I would like to cooperate to relieve the settlers to that extent.

The ACTING CHAIRMAN. While you are discussing that same subject, there is another subject pertinent to it also. There has been quite a strong request, at least from those reclamation settlers, that we enact a law allowing them to obtain a title after they have maintained the five years' residence, where they have been able to do so, and have that title subject to a lien or mortgage. In other words, they want some basis upon which to obtain credit for money to improve their lands. What is your opinion about that?

Secretary FISHER. I am in entire sympathy with that. I think the fundamental thing is cultivation and a sufficient residence to make sure that the man is not going to sell it to somebody else. If he can show those two things, I think we ought to help him in every way possible. Suppose we said he would have to cultivate one-eighth of the ground under the first year. Those that I talked with seemed to think that was a reasonable requirement, and two-eighths the sceond year, and three-eighths the third year, and at the end of the fifth year he would have a little more than half under cultivation. Then, if we said to him if you pay your charges to date, and

you pay an amount equivalent to two-thirds, or three-fourths, or whatever it is, of the charge, we will give you title right away, and make him pay the necessary percentage of the total reclamation charge, and make a lien that he can give the local bank or the money lender. But it would be no kindness or assistance to him to give him a title if it is not a title on which he can go and raise money.

The ACTING CHAIRMAN. He has to have a substantial basis of credit..

Secretary FISHER. Yes. Looking at it from that side, it was suggested to me, indirectly, by a concern in the East, that they would be delighted to loan money extensively on irigated lands in the West if in some way they could get assurance that the land would be appropriate security.

The ACTING CHAIRMAN. Under those circumstances would money loaned be secured?

Secretary FISHER. I discussed this question with some of these people with a view of seeing what they would think of the security. Let me illustrate. In the first place, this is not final, and I would be delighted to have suggestions from any members of the committee for the purpose of modifying my views and helping us to get nearer on this subject, if we want real settlement and real development. Suppose we adopted this policy: Suppose we required the settler to cultivate one-eighth of his land the first year and two-eighths the second, on up to the fifth year, and live on the land the last three years and pay, say, three-fourths, or even two-thirds might be enough, of the total water charge; say, two-thirds.

Now, at the end of the fifth year, what do you say to this proposition: He can go to the bank and say, "I have lived up to the requirements in regard to residence and cultivation, and I want to give you a mortgage. The Government will give me a certificate that I have complied with the residence and cultivation provisions. I will complete the reclamation charges, keep up the maintenance charges every year, and I want you to loan me so much money." The difficulty now is that when the bank loans there is the provision that the settler must continue on the land five years; he must live there and cultivate one-half of the land, and he has the full 10 years to do it, and the bank has no certificate whatever from the Government that these personal requirements have been complied with. I propose that the Government, at the end of five years, give a certificate to that man that he has lived there the necessary time and done his duty and all the Government has is the lien for the one-third reclamation charges.

The ACTING CHAIRMAN. Without any investigation?

Secretary FISHER. Yes, sir. The whole thing is clean. He has his title just as perfect as he could have, except the Government has the monetary lien on him for unpaid reclamation charges.

The ACTING CHAIRMAN. Would you issue a patent at the end of the five years?

Secretary FISHER. I would be perfectly willing to give him a patent, subject to the law.

Mr. RAKER. Wouldn't it be advisable also to apply this same principle when he should have paid, say, one-half of the reclamation and the expenses, and then reduce his power to borrow from the bank, the Government having the greater interest in the land than the

bank? It might be more convenient to work out that way than the way you suggest.

Secretary FISHER. Congress could pass a law that if the entryman paid one-third, or anything you chose, that he could get a patent, and I conceive the entryman in the reclamation project, having received the benefit of the Government expenditure, ought to be required to pay back just as much of the expenditure before he gets a patent as is fair.

Mr. KINKAID. Suppose the entryman makes his five years' proof and pays his one-third of the water charge?

Secretary FISHER. I said two-thirds.

Mr. KINKAID. Well, two-thirds of his water charge, and obtains a mortgage, and the Government is compelled afterwards to foreclose its lien. It would have to dispose of that land in an entirely different way than any other land it has disposed of.

Secretary FISHER. It could be disposed of subject to the lien in the bank—the second mortgage.

Mr. KINKAID. The bank wouldn't let you foreclose.

Secretary FISHER. And what does the bank do in regard to the taxes? You might say there is objection to any mortgage made where the holders of the mortgage are liable to lose their security if the taxes are not paid.

Mr. RUBEY. The bank will look after that.

Secretary FISHER. If the entryman does not pay his charges, that will be a cause for foreclosure; but the bank wouldn't let it be sold for the failure to pay reclamation costs.

Mr. KINKAID. But, coming back to the title, suppose the Government was compelled to buy in the land, because, having issued the patent to the land, the title would go back to the Government, and it was put up at public sale.

Secretary FISHER. It can be held by the Government just as it was before. It depends entirely on the statute.

The ACTING CHAIRMAN. It would be a wonderful aid and development to all these reclamation projects if they could get title and get somebody to go ahead and improve the country, and everybody would be benefited by it, it seems to me.

Secretary FISHER. That was the impression produced on me by talking to those people in the West and then talking with some of the bankers. I can see that the Government would make a distinct advance if we could adopt such a plan as I suggested, because if we put on the entryman a requirement to pay a little more than he would under the ordinary statute our installments would be greater than one-tenth a year.

We do sometimes require, as in one case I recall, the payment of three-tenths when the entry is made under the reclamation project, three-tenths of the reclamation charge, but as a rule it is not more than one-tenth, and sometimes not as much as that, and my own judgment is it ought not to be as much as that where it is spread over the 10-year period, because I think we can graduate our payments to make them smaller during the first years. But let us suppose the rule were that it would be divided into 10 equal installments. If at the end of five years the man wasn't able to comply with the requirement, he could, if he preferred, work it out on the 10-year basis, and would pay 50 per cent. If we require a man to pay two-thirds instead of 50

per cent and gave him a perfect title, the patent would be an inducement to him that it would be well worth his while. Indeed, I think the banks as a rule will require that of him anyhow. I mean, they would like to have their lien a little better than the 50 per cent basis under the reclamation charge. The result would be, if we said here, you pay 66⅔ per cent instead of 50 per cent, then we will give you a patent; we would get back into the reclamation fund that amount of money just that much quicker, and we would have the bank carrying this burden of the financial payments, as it should, instead of having the Government.

There was one thing that impressed itself on me this summer more than anything else, and that was the extent of the demand for additional expenditure by the Government on reclamation projects. The failure of a large number of private concerns throughout the West, who were undertaking privately these projects, has revolutionized the general feeling with regard to reclamation projects, and again and again men came to see me on the train and telegraphed for appointments who had been interested in private projects and were financially interested in the land, urging the Government to undertake their projects under the Reclamation Service.

Mr. KINKAID. With your permission, I would like to ask one question. I would like to have your views as to what you think about an extension of time from 10 to 20 years in which to make the water-rate payments. I have a bill pending with such an amendment.

Secretary FISHER. Congressman, that does not impress me favorably. I don't think it is any kindness to the settler, and it certainly is going to tie up the Government that much longer. Instead of getting our money back to use it some place else, it is going to take twice as long to get it back.

Mr. KINKAID. Let me ask this question: Suppose an amendment be passed authorizing the granting of a patent after five years and there would not be this amendment then to grant the time in which to make water-rate payments to 20 years, would not these two amendments work very well together, cooperate with each other, and at the end of five years permit the entrymen to mortgage his land and pay off the Government entirely instead of letting the Government's lien continue—paying off the Government water-rate charges entirely.

Secretary FISHER. Frankly, the 20-year period seems to me fully unjustified. I don't know of a reclamation project where it would be justified. The reclamation projects we have undertaken we all know have been undertaken under two sets of conditions. In the first place, some of them were picked out by the Reclamation Service as being projects which they thought were scarcely desirable or feasible. In the second place, there were a number of projects that were pressed upon the Reclamation Service by political conditions and under provisions of the law that the service has not been particularly proud of from the financial side. They are all working out rather astonishingly as a whole, when we consider conditions, but they are, nevertheless, to be made on that basis. I am urging now on behalf of the States where certain streams rise in one State and run into another, where we are using water, that it is not quite fair to the other State (Mr. Mondell will recognize the State to which I refer) to take all the water that is collected in that State and sell it to the

State farther down the stream. Considerations of that sore come in. Even when we consider all the present projects, there is not one of them that I know of that can work out in 20 years that you can not work out in 10 years. These projects that are undertaken now are pretty well established, and we are going to consider the question now as to what we are going to do in the future. There are so many projects pressing upon the department that can be paid for without the slightest hardship under the 10-year theory that, in my judgment, to put the 20-year project into law would be an unnecessary burden on the development of the West.

Mr. MONDELL. Isn't the situation about this: The law having authorized the Secretary to adjust payments, so that he can relieve the situation in any one year or in any series of years, are we not now, as a matter of fact, seriously confronted with the question as to whether it will be equitable or wise to insist upon the full payment at the end of the 10-year period; that is a question which we could meet a little later, as we approach nearer the close of the 10-year period?

Secretary FISHER. Let me say this: I had in mind what you more particularly mention in what I said before, that the present 10-year law, with the provision for readjustment, has given us a certain amount of administrative flexibility. That seems to be able to take care of every case that now exists. We have to remember there is a limit to leniency to the entryman. When a man demonstrates he is utterly unable to work out his own salvation under reasonable rules the sooner he recognizes that fact and takes what he can get for his labor and expense down to date and lets somebody who is able work out an agricultural task of that kind, the better it is going to be for him and the community. We have a lot of land entered under those 10-year requirements, where it is a detriment to the rest of the project to permit the individual entrymen who are lazy or incapable to run beyond the time in their payments, when the facts are perfectly clear on which we can determine what the cause of their failure is.

Mr. MONDELL. Going back to the matter that was under discussion when we took up the discussion of the irrigation projects—that is, the question of relieving the homestead entryman from the necessity of residence for certain periods—have you given much consideration to the idea of relieving the homestead settler from the necessity of residence during the winter months, fixing a certain definite period, say, from December to April, inclusive? That is the period named in the bill I have introduced, that being a suggestion in lieu, first, of the suggestion embodied in the Senate bill of an indefinite six months' leave of absence, and also as a substitute possibly of your suggestion of no requirement of residence the first six months be required.

Secretary FISHER. The first two years.

Mr. MONDELL. The first two years. The suggestion is based on the propositions that, first, the entryman can not ordinarily do very much on this land during the winter months. Sometimes it is necessary for him to go away from his land in order to school his children and secure employment. Second, that almost every winter we pass an act relieving a considerable number of the homestead settlers during that period from necessity of residence. It is possible you have not considered the matter sufficiently.

Secretary FISHER. Yes; I have considered it, not as much as I would like, perhaps.

Mr. MONDELL. May I say one thing more in order to cover a difficulty that may occur to you? The bill to which I referred also provides that this leave of absence shall not in any wise affect the present law relative to abandonment. In other words, a leave of absence for a definite period would not under those circumstances give the entryman any right to any absence at all subject to that period, because the general law, having provided for the right of contest after six months, would make his place contestible immediately after the close of that period.

Secretary FISHER. Those features would help the bill. What I have to say relates to the substance of the bill. What kind of a settlement do you expect to get permanently under the homestead law, a settlement where the settler is always going to have to go away from home during the winter months? Do you expect to build up that kind of a community?

Mr. MONDELL. Not at all. As a matter of fact, if you will allow me to elaborate a little on that question, I would not expect that the homesteader would every winter betake himself from his farm to leave it and abandon it. I would know, as a matter of fact, that being compelled to comply with the other provisions of the homestead law that it would only be ordinarily during the first years of his entry he would take advantage of the right to leave, and that in the majority of cases, under the conditions existing generally, but very few entrymen would take advantage of the right during the whole period, the thought being, however, that the entryman during at least the first years of his entry, being unable to do anything of a helpful or productive nature during those months, ought not to be required to be on his land continuously during that period.

Secretary FISHER. I thought the provision in regard to absence of two years would meet exactly the conditions you describe and meet them better than the bill you mention. As you say, entrymen ordinarily—and you are not thinking of the extraordinary case, because you can not pass a law for those cases alone—the entryman in a majority of cases, the great majority, is going to ask for absence only during the first years. When a certain district is thrown open for homestead entry and is suitable to establish homes, a proper place to establish homes, the query arises how are you going to provide for the permanent population in that district?

Mr. MONDELL. It seems to me your query is a pertinent one in regard to the suggestion which you made. If we left the homestead law otherwise than as it is, there would still remain the necessity of cultivation on the enlarged homestead; there would still remain under administrative provisions the necessity for some immediate cultivation on the irrigation homestead, but as to the ordinary——

Secretary FISHER. Pardon me, not if the present law remains as it is.

Mr. MONDELL. Well, only such cultivation as you might require as an administrative provision—no mandatory provision at all—and as regards the ordinary 160-acre homestead, no provision whatever in the law as to cultivation. This would be the result—and what we want in our country is permanent settlement—this would be the result: That men would be tempted to take 160-acre homesteads and hold them for two years, which they could do without residence or cultivation.

Secretary FISHER. Couldn't under the law that I suggested.

Mr. MONDELL. If you are going to revamp the homestead laws——

Secretary FISHER. I am going to revamp it to the extent I suggested.

Mr. MONDELL. And have entire cultivation?

Secretary FISHER. I am unconditionally opposed to it without that requirement.

Mr. MONDELL. But even then there is this objection which has been voiced in this committee against the nonresident homesteader, so-called. It applies in a limited way to Utah and Idaho. That is, it does not require settlement directly on the land. What we desire is more settlement—we desire to see the land fenced, houses built, people living in them.

Secretary FISHER. I intended my suggestion to cover the relinquishment question.

Mr. MONDELL. Now, you will get into a pretty large field when you get into the relinquishment field.

Secretary FISHER. I think it is a field we ought to get into right away, and the sooner you get into it the better it will be for the West.

Mr. MONDELL. There is a wide difference of opinion in regard to it. But my thought was that the relief from the necessity of residence during the winter months when no farmer, at least in the Northern States, can be doing anything upon his land, would be a good thing for him.

Secretary FISHER. It depends entirely upon what you are going to do. If you are not going to adopt the two-year provision I suggest, if you are going to abandon that theory of relief, I can see how you might draft a law which would permit him, under proper provisions, to be absent during the winter for a specific period. I think, then, he ought to be checked. He ought to be required to give notice when he intends to leave and state the reason, and it ought to be possible to take these things up at the time without having a whole army of special agents to go in and see whether he complied with the statute. And you don't want to throw it open generally so that the homesteader can always be away in the winter time. You want to get the settler to establish schools in his neighborhood. You don't want to establish a system that he gets a habit of going off some place else to have schools. What you want to accomplish is to have a permanent community.

The ACTING CHAIRMAN. If the Secretary of the Interior is through with his general statement, I will give permission to each of the members of the committee to ask any questions in which they might be interested, as soon as the Secretary finishes the general statement.

Secretary FISHER. There is just one thing that occurs to me, in addition, and that is this question of timber lands. A suggestion has occurred to me which I would like to state to you, so that you may think it over. I was very much impressed with the theory that we ought to take our timber lands and divide them into two classes. We ought to take timber land that is suitable only for timber, and when we cut the timber it ought to be reforested. It is not adapted for agricultural uses and ought to be used for timber purposes. I think that land ought to remain in the hands of the Government. I don't think it ought to be sold to private individuals under any conditions. I think the Government ought to sell the timber on it un-

der proper provisions, and then it ought to keep the land. I am a member of the commission to buy lands exactly of that character here in the Appalachians. Congress has made a considerable provision of money, and we are now engaged in buying from private individuals lands of that character which is useful only for timber purposes. I don't think we should make that mistake in the West. Sell the timber and keep the land, and then let the Government reforest that land and, when it is ready to sell the timber again sell it. Have proper forestry measures to protect our stream flow and reservoir sites and, so far as we can, keep it under the hands of the Government. Then, I think land which has timber on it now, but which will be valuable for agricultural purposes after the timber is cut off, ought to be administered by the Government in this way: I think the Government ought to sell the timber and then throw the land open to homestead entries. We have a lot of that kind of land, and I think that kind of land will be released from forestry reservations, and I think that instead of attempting to sell that kind of land and dispose of it under homestead laws we ought to sell it under the timber law and then throw it open to homestead settlers.

Mr. MONDELL. Would you include in that first class of lands the rough, broken, and generally rocky divides and hills that extend through the intermountain States between the valleys, a few hundred acres in a place adjacent to homestead settlement, and which contain only a scattered forest growth of jack pine and spruce and cedar, which grows in that country?

Secretary FISHER. I would include that area with other similar large areas.

Mr. MONDELL. Would you include every area of that kind?

Secretary FISHER. I think so. Why not?

Mr. MONDELL. It occurred to me the Government would have a pretty large contract if it took over every rocky divide in a State like mine.

Secretary FISHER. Why shouldn't it?

Mr. MONDELL. Why should it?

Secretary FISHER. Because it is better handled under the Government than in any other way; because it has only got to be reforested.

Mr. MONDELL. Let me understand you, Mr. Secretary. Do you mean that you would include every little isolated area of from 100 up to a few thousand acres in a forest reserve?

Secretary FISHER. Oh, not at all; not at all, Mr. Mondell. I would use some common sense and deal with the matter in man fashion.

Mr. MONDELL. But this land I speak of has some value for grazing purposes. Its value for grazing purposes is infinitely greater than its value as timber lands.

Secretary FISHER. I would take every tract of land in the Federal domain and decide what its highest and best use was. If it was best for grazing, I would use it for grazing.

Mr. MONDELL. How would you decide it?

Secretary FISHER. I would have it decided by an administrative agency of some kind. I would decide what each tract of land, broadly speaking, was best adapted for. I have letters from the live-stock association, and they have passed resolutions urging a leasing law. They have gotten over the delusion that the grazing land of this country can not be handled any other way.

Mr. MONDELL. You know what the National Live Stock Association is? Composed largely of large cattle owners.

Secretary FISHER. Yes; but I have talked with the small man, and he ought to know the condition of things.

Mr. MONDELL. Can you get the small man and the farmer in favor of the policy?

Secretary FISHER. No. There are any number of them in favor of the lease bill. There is no difference of opinion. Under the present system the range is being destroyed. There is no doubt about it. Both the big and little men say it is being utterly ruined under the present system.

Mr. MONDELL. I want to say, after a residence of some 45 years in the locality in which I now live, I dissent emphatically to the proposition that the range is destroyed or that favorable seasons will not restore it.

Secretary FISHER. Then we will have to join the issue on that fact.

Mr. MONDELL. I know the range is often overgrazed, but I know up to this time it has shown wonderful recuperative properties. When the rains came the damage was repaired.

Secretary FISHER. In other words, what you mean is this: It is being overgrazed and very much injured, but up to date we have been fortunate in having that injury stopped short of destruction. You agree absolutely with my statement, except you don't agree it has progressed as far as I think it has. The progression in the direction of destruction you concede—you simply state that because there have been fortunate rains the damage has been lessened.

Mr. MONDELL. I think that is true. If the grazing lands were in private ownership and the private owner charged with responsibility, they would reach a higher average of productiveness than now.

Mr. RAKER. I think that in Colorado the large stockmen would like to have all the Government lands. They don't want to have anyone come in and take up the Government land, because it does curtail their range; and you must either follow their views or put it into an indefinite leasing period to the local settler, who would like to have the big cattleman put out.

Secretary FISHER. I quite agree with you. If a broad tract of land, however, can be cultivated by he homesteader, I wouldn't lease it for a minute. That is the whole question.

Mr. MONDELL. If there ever was a man born of woman who could say definitely and finally and accurately what lands were unquestionably grazing lands and never would be good for anything else, then it would be much easier to classify them.

Secretary FISHER. To hear the Congressman talk you would think he never read the bills pending in regard to the laws for leasing purposes, because any law made can be modified immediately after it has been made permitting the homesteader to go in. No one wants to anticipate the development of agricultural purposes, but all the leasing laws which have been suggested for grazing purposes provide that the settler can go in and homestead under them. Therefore we don't have to cross the bridge that the Congressman speaks of.

Mr. STEENERSON. When you spoke of timber lands, I would like to ask if you have observed the merits of that land as put in operation by the Interior Department under a law passed 10 years ago.

Secretary FISHER. I have not looked into the matter.

Mr. STEENERSON. There has been some homesteading, but usually the homesteaders complain of the stumps. I am speaking of Minnesota.

Secretary FISHER. I have recently had a talk with one of the largest operators of lands in Minnesota, a man who has been in public life and who is public spirited, and he informs me that the difficulty with Minnesota lands was that they had little or no agricultural value, and I imagine the difficulty to which you refer would be the difficulty in the character of the ground and not the method of disposition.

Mr. STEENERSON. I did not say there were any great difficulties, but the very plan you suggested has actually been in operation in Minnesota, particularly in my district, for nearly 10 years, and I thought you had taken your suggestion from that fact.

Secretary FISHER. No; I had not.

Mr. STEENERSON. There are many homesteaders there on cut-over lands.

Secretary FISHER. How have they operated?

Mr. STEENERSON. I don't know.

Secretary FISHER. All I did was to inquire, as I told you, from men who are interested in Minnesota lands. I was told by a man whose business it is, who deals in timber and agricultural lands, that the land not now taken up in Minnesota under the homestead law has very little agricultural value.

Mr. STEENERSON. He is entirely mistaken; it is the richest land in the world.

At 12.15 p. m. the committee adjourned.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Monday, February 5, 1912.

The committee met at 10.30 a. m., Hon. Edward T. Taylor (acting chairman) presiding.

STATEMENT OF HON. WALTER L. FISHER, SECRETARY OF THE INTERIOR.

The ACTING CHAIRMAN. Mr. Secretary, the committee will be pleased to hear from you this morning upon anything that you desire to address the committee upon, concerning the just administration of the public-land laws or any amendments that you think ought to be taken up at this session of Congress, or any particular phase of the subject that you desire to be heard upon briefly. There are some 300 bills now pending before this committee, and there is a world of work before us. Necessarily, we must systematize this work as much as we can, and I am sure that the committee desires, as far as possible, to work in harmony with the Department of the Interior.

Mr. RAKER. I desire to suggest, Mr. Chairman, whether it would not be advisable for the Secretary to be permitted to proceed with his statement without interruption until he gets the matter he desires to present before the committee.

The ACTING CHAIRMAN. I thought that would be understood, and I suggest that members of the committee refrain from interrupting the Secretary, at least until he intimates that he is willing to be interrupted.

Secretary FISHER. I am willing to be interrupted at any time. At the last session I presented some general suggestions that occurred to me as being in the interest of the public, and particularly that part of the public that is directly concerned with the settlement and development of the public domain. I have had no opportunity to examine the stenographic notes of the previous meetings, and therefore have not very clearly in mind just what ground was covered and what was left uncovered. There are some members of the committee here to-day who were not here at the last meeting, and it might therefore be helpful to say just a few words in a preliminary way. All my interest in this matter is to work out some constructive suggestions under which we can go ahead with the real settlement and real development of the public lands. I regard it as fundamental, however, that measures which will enable the public land to be acquired quickly and easily are by no means necessarily in the interest of real settlement and development. It is absolutely essential, in order to promote the real settlement of these lands, that the laws upon the subject shall be such as will insure that the entry is by people who wish to settle the lands, and not by those who wish to acquire them for the purpose of selling them at a profit to the real settlers. I mention that, because since the last meeting of the committee my attention has been called to an editorial in a western paper complaining of the regulations in the General Land Office, and pointing out the fact that in the case of some of these entries the settlers, in many instances having made application for final proof, were now residing 1,000 miles or more away from the land.

I wish to enter on record the statement that that sort of settlement does not quite appeal to me, where the evident purpose is only to acquire title and where the entryman may go away and live 1,000 miles from the land. This sort of settlement does not arouse my enthusiasm. While I am perfectly willing that he should have all the legal rights to which he is entitled, it seems to me that he should want to acquire the title in order to live on that land, and not to live 1,000 miles away from it. The man who does undertake to develop the public domain ought, I think, to be assisted in every possible way, and in the case of the bona fide settlers the laws and the regulations should be made just as liberal as possible to make them consistent with the assurance that he is going to be a real settler. It was in that connection that I made the suggestion in my annual report, and it was referred to the committee at the last meeting, that we might very properly liberalize the provisions requiring actual residence on the public domain during the first two years after entry, especially as to lands which are included in an irrigation project. The fact that that land has to be cleared of its desert growth at the very start, that it has to be ditched, and in many instances has to be cultivated with alfalfa before it can be made really productive or available for the permanent use to which it is best adapted, it seems to me should lend a good deal of justification to the claim which I made in the West this last summer that we should not insist absolutely upon the requirement that the settler should live on that ground during the

first two years. At the suggestion of the acting chairman of this committee and of some others in Congress, as well as of some in the Senate, who have been talking about that suggestion and seemed to be impressed by it, I have had a draft of a bill prepared.

It is not my desire, nor do I believe it ought to be the general practice, to have executive officers to prepare bills, and I have sympathized to some extent with the sentiment that arises in Congress in that regard, but I think there are exceptions when this is proper, and that this case presents one of those exceptions. At all events, whether it is or not, the suggestion I am prepared to make is at the request of the chairman.

The ACTING CHAIRMAN. At the request of some members of the committee, I asked the Secretary if he would not draw a bill in relation to modifications in the homestead laws, in order to give us something tangible to work on as a basis here that would be in the nature of a liberalizing of the homestead laws.

Mr. PICKETT. Are you going to read your suggestions in the form of a bill now?

Secretary FISHER. I was going to ask the committee what it would prefer in the matter, and I was going to say that I have here a draft that has been prepared, and the draft is now in the hands of the different bureaus in the Department of the Interior and of the divisions that are concerned in it. I have not had an opportunity to check up their suggestions, and no doubt they have not had an opportunity to make them. It may be helpful, however, to indicate the general character of the bill.

Mr. PICKETT. What I had in mind was to suggest that, in view of the fact that some of us on the committee have not the familiarity with the public-land laws that our western members of the committee have, you read each section of the bill and then at the end of each section pause and state wherein it differs from the present law or point out the modifications that are made in your bill. I think that would enlighten some members of the committee, or, at least, those of us who are not so well posted on the public-land laws.

Secretary FISHER. Perhaps, in that direction, we could cover the matter a little broadly in the beginning. The present law relating to reclamation projects provides that the entryman shall make his entry under the homestead law and comply with the homestead laws, which prescribe five years residence and five years cultivation. The irrigation law further provides that installments of the irrigation charge shall be divided into payments; that is, that the total irrigation charge shall be divided into installments not exceeding 10 in number. The result is that at the end of the five-year period required under the homestead law there are five installments of the irrigation or reclamation charge not yet paid. Then, these unpaid installments of the irrigation or reclamation charge may be one-half of the total charge or it may be more or less, as the statute runs. I recall one instance, and a recent instance, in which it was provided that the reclamation installments should be paid by the entryman at the time the project was opened. This was a case in which the land was of great value, and where irrigation immediately lifted it above its present value and put it in such shape that it would readily bring a very greatly increased price. There are other projects, however, where the first installments average less than one-tenth of the total

charge per annum, because of the fact that it is difficult to put the land under cultivation, and the homesteader has his hands quite full at the beginning. Therefore, they have graduated these payments so that the first installments are less than one-tenth of the total charge. Of course, that means that the later installments must be proportionately greater, because at the end of the 10-year period they must collect the entire charge. That last statement, however, you have qualified by a recent law under which we have the right to readjust the charges, and we are therefore enabled to take care of the projects that have not been as successful as they were expected to be for one reason or another.

The irrigation law also requires that the settler shall have one-half of the irrigable area of his entry. The homestead law, as you doubtless know, is a general law applying to all classes of entries, and made possible of execution, in my opinion, only by the process of administrative construction which is closely akin to what is called judicial construction and which is sometimes regarded in the light of new legislation. That is to say, the law provides that the homesteader must reside upon and cultivate his entry, or, rather, that he must reside upon and cultivate the same. Now, the department has construed the word "and" as "or," and the department has construed the words "the same" to mean any part of it, or such portion of it as will indicate good faith on the part of the entryman.

Now, the law being in that state, this bill is suggested, which I will now read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That public lands withdrawn under the second form prescribed by section three of the reclamation act, approved June seventeenth, nineteen hundred and two (volume thirty-two, Statutes at Large, page three hundred and eighty-eight), may hereafter be taken up only by entries made under this act, hereinafter called "reclamation entries." In opening to entry such lands the Secretary of the Interior may prescribe regulations concerning the time and manner in which such lands may be settled upon, occupied, or entered by persons entitled to make entry thereof, the payments or deposits to be made by applicants and the conditions under which the payments or any part thereof may be forfeited for failure to make entry or under which they may be refunded: *Provided,* That the fees and commissions to be paid on account of reclamation entries shall be the same as are now required by law for homestead entries.

SEC. 2. The permanent right to the use, for lands in private ownership, of water from works constructed under said act and acts supplementary thereto or amendatory thereof may hereafter be acquired only by purchase under this act or under the provisions of the act entitled "An act to authorize the Government to contract for impounding, storing, and carriage of water, and to cooperate in the construction and use of reservoirs and canals under reclamation projects, and for other purposes," approved February twenty-first, nineteen hundred and eleven. Each tract of private land for which such a water-right purchase is or may be made under this act shall be known as a "reclamation holding."

SEC. 3. That the Secretary of the Interior shall fix, as prescribed by section four of the said reclamation act, the limits for each reclamation entry on public lands, and for each reclamation holding of private lands, at such areas, not in any case exceeding one hundred and sixty acres, as in his opinion may in each case be reasonable for the support of a family on said entry or holding. The tracts so limited for reclamation entries shall be known as "farm units." No person shall under this act make more than one reclamation entry, nor purchase a water right for more than one reclamation holding, nor shall any one person both make a reclamation entry and purchase a water right for a reclamation holding.

SEC. 4. That no purchase under this act of a water right for a reclamation holding shall be made except upon the express condition that the United States

and its successors in the control of the project, in consideration of such sale, shall have a lien on the reclamation holding superior to all other claims and demands whatsoever attaching thereto, after the filing of application to purchase water right, for all amounts then due and thereafter to become due on account of such water right, plus the costs of enforcing such lien, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land or occupant thereof residing in the neighborhood.

SEC. 5. That every entryman of a "reclamation entry" shall have the qualifications now prescribed by law for homestead entrymen: *Provided*, That hereafter, in the administration of the homestead law, a reclamation entry shall be deemed and taken to be equivalent to a homestead entry of one hundred and sixty acres; and every such reclamation entryman shall, within two years from the date of his entry, build or require a habitable house on his farm unit and establish residence thereon; and shall actually reside thereon for the period of three years beginning at the expiration of the two years aforesaid. Every such reclamation entryman and every purchaser of a water right for a reclamation holding shall progressively reclaim and cultivate, to the satisfaction of the Secretary of the Interior, the irrigable area of his farm unit or reclamation holding, as determined by or under the authority of such Secretary, in such time and manner that there shall be so reclaimed and cultivated not less than one-eighth of such irrigable area during the first year after the date of his entry or of approval of his water-right application, two-eighths during the second year, three-eighths during the third year, four-eighths during the fourth year, and five-eighths during the fifth year, and thereafter until patent or final water-right certificate shall issue; but in no case shall the portion of the total irrigable area so reclaimed and cultivated be less than five acres in the first year, ten in the second year, fifteen in the third year, twenty in the fourth year, twenty-five in the fifth year and thereafter until patent or water-right certificate shall have issued, proper deductions in the discretion of the Secretary of the Interior being made for buildings, yards, and other like purposes: *Provided*, That if the entire irrigable area (less deductions as aforesaid) shall have been so reclaimed and cultivated before the fifth year such reclamation and cultivation of such entire area shall continue until patent or final water-right application shall have issued as aforesaid: *Provided further*, That clearing and breaking the ground during the first year of cultivation of any portion of the tract, without the sowing or harvesting of any crop, and that the planting and proper care of orchards in any year, shall be considered cultivation within the meaning of this section.

SEC. 6. That every such entryman or purchaser of a permanent water right for a reclamation holding, within six years after date of his entry or approval of his application to purchase, or within such further time as the Secretary of the Interior may fix for good cause shown, shall make, to the satisfaction of the Secretary of the Interior, due proof of compliance with all the requirements of this act as to residence, improvements, reclamation, and cultivation, and may receive a certificate that such proof is satisfactory. After such proof is made and upon payment of all amounts, with interest, then due on account of his entry or purchase for building, operation, and maintenance, including drainage, if the amounts then and theretofore so paid on account of the building charge shall be not less than one-half thereof, patent or final water-right certificate shall issue to such entryman or water-right purchaser, with reservation of a lien as hereinafter specified. A failure by any such entryman or purchaser, before such patent or certificate of water-right purchase shall have been earned, to comply with the requirements of this act as to residence, improvement, reclamation, or cultivation, shall render the entry and water-right application subject to cancellation, with the forfeiture of all moneys paid thereon and of all rights with respect thereto.

SEC. 7. That every patent and water-right certificate issued under this act shall expressly reserve to the United States a lien on the land patented for which a water right is certified, superior to all other claims and demands whatsoever attaching to such land after the making of the entry for the farm unit or the filing of the application to purchase such water right for the reclamation holding, for all amounts then due and thereafter to become due to the United States or its successors in the control of the project under this act on account of such entry or water right. Upon default of payment of any amount so due, title to the land shall pass to the United States free of all incumbrance subsequent to the entry of the farm unit or the application to purchase water right for the reclamation holding, subject to the right of the defaulting debtor to redeem

the land within six months after the default shall have been adjudged by payment of all moneys due, with interest as hereinafter provided, and costs; and the United States may, at its option, cause the land to be sold at any time after such default is adjudged, and from the proceeds of the sale there shall be paid into the reclamation fund all moneys due, with interest as hereinafter provided, and costs. The balance of the proceeds, if any, shall be the property of the defaulting debtor: *Provided*, That in case of a sale after default under this section the United States shall be authorized to bid in such land at not more than the amount in default, including interest and costs. Land acquired by the United States under this section may be opened to entry, in the discretion of the Secretary of the Interior. Jurisdiction of suits by the United States for the enforcement of the provisions of this section by foreclosure or otherwise is hereby conferred upon the United States district court for the district wherein the land or any part thereof lies.

SEC. 8. That the Secretary of the Interior shall cause a record to be kept at some convenient place or places within the limits of or convenient to each reclamation project, so long as the United States shall continue to operate the reclamation works, showing, for the information of the public, the amount due at any time on account of any entry made or water right purchased under this act, and he shall provide for furnishing copies of such records, or of portions thereof, duly authenticated under seal by designated employees of the Reclamation Service, and for charging and collecting fees for such copies. Copies so authenticated shall be admissible in evidence in like manner and to the same extent as copies authenticated under section eight hundred and eighty-two of the Revised Statutes.

SEC. 9. That all moneys now or hereafter due to the United States in connection with any operations under the reclamation act and acts supplementary thereto or amendatory thereof, including this act, shall be paid to such officer or employee of the United States as the Secretary of the Interior may prescribe. Hereafter in determining the charges to be made per acre with a view of returning to the reclamation fund the estimated cost of construction of any project, and the number and amount of annual installments, not exceeding ten, in which such charges shall be paid, interest at six per centum per annum from the day when the first installment on account of any farm unit or reclamation holding is due to the day when each subsequent installment on account thereof is due shall be reckoned by the Secretary of the Interior as a part of the cost of construction. And the Secretary of the Interior shall, by regulation or otherwise, provide for allowing a discount at said rate of six per centum for cash payments of any installments after the first in advance of the date when the same shall be due, but no contract heretofore duly made by the Secretary of the Interior with any landowner or association shall be hereby affected without the consent of such landowner or association, and no installment or charge heretofore liquidated and fixed by public notice or otherwise under the said acts or either of them shall bear interest before the same shall be due, nor be allowed a discount for payment in advance by virtue of this section, unless the same shall have been readjusted with the consent of the entryman or water-right purchaser as hereinafter provided. All moneys received from the above sources shall be paid into the reclamation fund. Upon all charges or installments or portions thereof due and unpaid, interest at eight per centum per annum from the date when such charges or installments are due, respectively, shall be paid as a part thereof. A failure to pay when due, with interest thereon as aforesaid, any two installments or the final installment shall render the entry and the appurtenant water-right application, or the water-right application or final water-right certificate for a reclamation holding, as the case may be, subject to cancellation by or under the authority of the Secretary of the Interior, with the forfeiture of all rights thereunder, as well as of all moneys theretofore paid thereon, and the Secretary may, in his discretion, enforce such other remedies as may be applicable. No right to the use of water shall permanently attach until patent or water-right certificate shall have been earned under this act after full compliance with all the requirements made hereby as conditions precedent thereto.

SEC. 10. That entries and water-right applications heretofore made under the said reclamation act and acts supplementary thereto or amendatory thereof, including desert-land entries made subject thereto in pursuance of section five of the act of June twenty-seventh, nineteen hundred and six (volume thirty-four, Statutes at Large, page five hundred and nineteen), upon which patents or water-right certificates have not yet been issued, may, upon the request of the

entrymen or applicants, be made subject to this act by and at the discretion of the Secretary of the Interior, who shall in such case equitably readjust the unpaid installments of charges for building, operation and maintenance, and drainage, in conformity with the provisions of this act, reckoning interest for that purpose at six per centum per annum.

SEC. 11. That the Secretary of the Interior is hereby authorized to make all needful rules and regulations and to do and perform all things necessary or proper to the execution of this act.

SEC. 12. That all acts and parts of acts inconsistent with this act are hereby repealed.

Now, there doubtless should be some language inserted in the bill referring specifically to foreclosure, if necessary in order to collect the lien. I doubt whether the general language in regard to remedies would be as wise as would be a specific reference made in addition to that general language. Briefly, this bill provides simply this: It leaves the present law entirely as it stands, or to the extent that anyone who wishes to acquire a right under the existing law can do so, but any entryman who wishes to substitute the actual cultivation or progressive cultivation for residence can do so, being thereby relieved from the necessity of living upon the land for the first two years, but he must cultivate one-eighth the first year, two-eighths the second year, three-eighths the third year, and so on, progressively cultivating one-eighth of the land each year and not less than that. He must cultivate at least one-eighth of the entry, in cumulative fashion, as I have indicated, during the first five years. If he does that, if he has built a house, if he has paid his reclamation charges as due—that is, to the extent of one-half of the total charges—he can then be given a title under patent which will be absolutely good.

As a patentee he can borrow money upon the land, or he can sell or transfer it at the expiration of the five years. Of course, if he should go on and pay up the final reclamation charges as they have accumulated during the first five years, so that the total amount paid by him will be enough to cover the total charge, of course, he will include that asset in his loan, and he will be able to borrow from the bank that much more money. Suppose he was $300 or $500 short on his payments and he wanted to borrow $1,000 for general purposes, he would borrow $1,500.

Mr. FERRIS. Suppose the payments had accumulated during the first five years to such an extent that he was not able to pay them without going into the loan, which I presume is usually the case——

Secretary FISHER. No, sir; it is quite the contrary. An overwhelming majority of the reclamation entrymen pay their installments each year as they become due.

Mr. FERRIS. But that is not true with reference to other payments?

Secretary FISHER. There have been some exceptions where these reclamation projects were undertaken under pressure of one kind or another, such as local and State pressure, but political pressure and general pressure, which comes with the justifiable desire that the particular States or localities shall be represented in the reclamation work. With the exception of some of those projects which, perhaps, were not wisely located, the great majority of reclamation projects are going along in most excellent fashion, and the annual installments are being paid up to date by an overwhelming majority of the entrymen.

Mr. FERRIS. Now, what I wanted to inquire about was this: At the expiration of the five-year period, we will assume that the entry-

men have paid up or have had paid up for them all the charges that have accrued and the patent is issued. Now, whose lien is prior in point of time, the lien of the Government or the lien of the mortgage company that has advanced the money?

Secretary FISHER. The lien of the Government.

Mr. FERRIS. Do they have any trouble in making the loans when there are five deferred payments having prior lien upon the land?

Secretary FISHER. Well, they have told me that there will be no difficulty about it. Of course, they have a great deal of trouble under the present law for the reason that at the end of the five years there are certain personal duties yet to be performed by the entrymen which the bank itself can not exercise or control, so to-day, at any time short of 10 years, unless all payments have been made and the requirements as to residence and cultivation have been met, there are still certain personal duties to be performed on the part of the entrymen, which the bank, as I have said, can not exercise or control. Under these circumstances, they refuse to make the loans, because if they have to foreclose, they are then left with a title which they can not protect or perfect by making the payments, but they would be left with a title which they can only protect or perfect by trying to compel this entryman to live on his land, or something of that sort, which they could not do. Now, that is just the feature that I want to take out of the law. What I want to see is this: After we get five-eighths of the land cultivated progressively, as I have indicated, one-eighth each year, and after the reclamation charges have been paid in and the man has lived on there for the three-year period, and when he has complied with the requirements as to cultivation and residence, I want to relieve him of further personal obligations entirely and make it a financial obligation.

Mr. FERRIS. And relieve him of the financial obligation?

Secretary FISHER. No, sir; the bank will be willing to take the land, because if the bank forecloses and takes it over itself or sells it to a purchaser, the purchaser or the bank, as the case may be, must make the payments remaining.

Mr. FERRIS. And with no homestead on it?

Secretary FISHER. No homestead or personal obligation. All that would be covered by a certificate of the Government issued at the end of five years, to the effect that these have been complied with.

Mr. FERRIS. And the charges under the reclamation project range from $25 to $50 or $60 per acre?

Secretary FISHER. Yes, sir; and some higher than that.

Mr. FERRIS. Then, if one-half of the payment remained due and unpaid, there would be against the land a prior incumbrance ranging from $10 to $50 per acre?

Secretary FISHER. Yes, sir.

Mr. FERRIS. Do you think the bank would make the loan under those circumstances?

Secretary FISHER. From such inquiries as I have made, I think if one-half of the charges had been paid that the bank would be perfectly willing to take the title.

Mr. FERRIS. If that is true it is a true compliment to the Reclamation Service. I should think that in a great many cases the project would not be successful, and, in that event, the party making the loan, whether a bank or not, would necessarily have to investigate the

probability of success of the irrigation project as well as the real intrinsic value of the property on which the loan is made.

Secretary FISHER. There are projects out West, for instance, not taking the fruit farms or the more definitely agricultural lands, where the land, of course, is worth frequently as much as $150 an acre which, when put in cultivation, is selling at from $100 to $200 per acre. There is land that I know of which, without water, is only worth about $10 per acre and which the private owners of it are offering at $200 per acre. They are paying an agent $100 per acre, and the agent is paying for the advertising, etc. This is a good illustration of what I said in the beginning. It is a case where, after allowing these people to go in, they are going on the theory of making slow sales with large profit instead of the reverse, and the settler who is really going in to live on that land must pay $200 per acre for it, whereas he ought to have had it for $100 per acre, because they are dividing the proceeds with the local agent. I think that is one thing that we ought to stop.

But there is another point. It is perfectly clear that there should be some plan by which the bank will be able to say, "If you have paid one-half or two-thirds of this total charge we will regard the security as ample for the loan, provided the title pledged is not one where your personal compliance with the requirement as to residence is essential in order to make the title good, because when the bank undertakes to enforce its lien by foreclosure proceedings, the interests of the bank and those of the debtor conflict, and the debtor can say, "Look here; I will not live on the land if you foreclose the lien." That is the reason the bank will not lend money on that sort of security now.

Mr. FERRIS. I understand from your remarks, and also from the bill, if I correctly understood it from your reading, that it is your purpose to strip the proposition at the end of the 5-year period of all homestead obligations, so that at the end of the 5-year period, and before the end of the 10-year period, it shall be a financial transaction purely. Now, is there any exception to your rule that the Government shall have the first lien?

Secretary FISHER. Not under this bill.

Mr. FERRIS. Has there been any under former procedure in reclamation projects?

Secretary FISHER. No, sir; not that I know of.

Mr. FERRIS. Lands are not accepted for irrigation purposes in any case where they are covered by any incumbrance at all?

Secretary FISHER. I would not want to make a sweeping statement like that. What might be the situation in reclamation projects that included a portion of private land. where these lands had claims against them that we could not get rid of, so as to put the Government where it might hold the first lien, there might be some exceptions; but in such cases the remedy the Government would rely upon would be the right to shut off the water. They might not have the title and might not be able to foreclose against that land, but the right to shut off the water and stop the irrigation would afford a pretty effective lien right there.

Mr. FERRIS. Have private lands been irrigated with incumbrances on them?

Secretary FISHER. No, sir; it would be an exception.

Mr. FERRIS. As I understand it, section 8 of your bill provides for the maintenance of an office at each and every project?

Secretary FISHER. Yes, sir.

Mr. FERRIS. How many projects have you now in the United States?

Secretary FISHER. I would not be able to say. My annual report gives the number, I think. I think there are 32 of them.

Mr. FERRIS. This would not have any application to the irrigation of Indian lands, would it?

Secretary FISHER. No, sir.

Mr. FERRIS. And you have made no recommendation with reference to having an officer at each Indian project?

Secretary FISHER. No, sir; but we do, of course, because we have a local agent in charge of these projects.

Mr. FERRIS. Would not that be quite an additional expense to what we have now?

Secretary FISHER. I think it would be a reduction of the expense. That section is intended to incorporate the other recommendations I made that these reclamation payments should be made to the Reclamation Service. This recommendation is made in my annual report and is one in which both the Land Office and the Reclamation Service concur.

Mr. FERRIS. This plan is proposed for the accommodation of the settlers?

Secretary FISHER. Yes, sir; to save them from the trouble and inconvenience of going to the land offices, which are not always easily accessible. I can not understand why you gentlemen representing the Western States have not had that language changed. I can not understand why it should ever have been the law. It is something I can not appreciate.

Mr. MONDELL. I think there are a number of difficulties in the way——

Secretary FISHER (interposing). I can not understand any reason on earth for it. I do not know whether Mr. Mondell is in sympathy with my objection or not, but I can not understand why that requirement should be permitted to stand. I wish you could see the complaints that come to my office with regard to delays in all these matters; and I can not really understand why this, the most prolific source of delay, should be permitted to remain on the statute book. Under the present law the reclamation settler has to go to the nearest land office where these collections are made, and the record of the transaction must go from that local land office down to the General Land Office in Washington, and it must also go through the local reclamation service and be handled back and forth. These matters must be handled by the local land office and by the local reclamation service; and then we have here in Washington a central reclamation office and a central land office, and between these four offices the opportunities for delay, misunderstanding, mistakes, and clerical inadvertence account for a very large amount of the delays that the settlers on the reclamation projects have to overcome.

Mr. MONDELL. With a view to accomplishing what has been suggested, I have on various occasions endeavored to draft a bill to cure the trouble; but when I got into the details of the matter I found some difficulties, although I think they could be overcome. In the first

place, we will be confronted with the proposition that we would be increasing the expense by creating what would amount to a large additional number of land offices. Personally, I do not think there is anything in that contention, but it is one of the things that we would have to meet.

Secretary FISHER. The proposition is that the local reclamation service, which is provided for, anyway, would collect the money and transmit it to the proper office. If it should go to the General Land Office, it would be transmitted to that office; if it should go to the Reclamation Service, it would be transmitted to the Reclamation Service. That is all there is of it, while the whole thing, as I see it, would be greatly simplified, and not only would it be demonstrated that no additional expense would be incurred, but that a saving would be effected in the matter of clerical work.

Mr. MONDELL. If the proposition is simply to transfer the matter of payment——

Secretary FISHER (interposing. That is all.

Mr. MONDELL (continuing). So that the payments shall be sent to the General Land Office, of course, it must be referred to the local land office, unless you entirely change the procedure in regard to contests; because contests in reclamation projects are based not only on the failure to make payment but on other grounds, and eventually you must come back for information to the local land office. I think that could be accomplished, but it is not the easiest thing in the world to accomplish, by reason of the fact that the local land office still has control of matters of contest.

Secretary FISHER. I do not see that that would make any difference.

Mr. MONDELL. We would be glad to have in concrete form the views of the department on that point.

Secretary FISHER. I have it in this bill.

Mr. MONDELL. As I understood the bill from your reading of it, I thought you transferred the jurisdiction away from the local land office as to the reclamation projects.

Secretary FISHER. No, sir.

I want right at the beginning to say that this bill has been prepared hurriedly. I have not heard from the Land Office in regard to it, and if they have any suggestions to make in connection with the matter, we will call it to your attention.

Mr. TAYLOR. I make this suggestion to the committee: It might be well to refer this matter to a subcommittee composed of the members of this committee having reclamation projects within their States, and then ask that subcommittee to call in Members of Congress from other States that have reclamation projects and confer with them and report back to this main committee any amendments that may seem to them advisable.

Mr. FERRIS. I want to ask the Secretary about another provision of his proposed bill. There is some part of that bill, perhaps the salient part of it, which provides for practically two years in which to establish residence on the land. I want to ask you, Mr. Secretary, if there is anything in that bill or in the existing law that permits the relinquishment of this farm entry?

Secretary FISHER. There is nothing in the bill that does.

Mr. FERRIS. Is there anything under existing law that does?

Secretary FISHER. The Commissioner of the General Land Office has called attention to the fact that this question of relinquishment ought to be safeguarded in any bill of this kind, or in any bills embodying some of the other suggestions I have made, where I have not carefully considered it. I am not especially familiar with the relinquishment features of the law.

Mr. DENNETT. I think they could relinquish it under the law as it exists at present, and I think there ought to be new legislation.

Mr. FERRIS. As a matter of fact, the longer you stretch out the time in which they may go on the land, the longer the time they have in which to relinquish or juggle with their entry?

Secretary FISHER. Yes, sir.

Mr. FERRIS. Now, in the absence of some legislation in addition to the present law, would it not be well to make some provision to cover that feature of the matter?

Secretary FISHER. I think it would. I think that should be safeguarded. I do not know whether the attention of this committee has been called to the report with regard to a relinquishment bill, but I think that ought to be before the committee. You have some measures involving relinquishment pending, and I think we have sent a report here on that subject. I think, as the commissioner does, that there should be a general law on the subject of relinquishment which will protect relinquishment generally, and that it should be so drawn that it should apply to entries under this bill just as to any others.

Mr. FERRIS. What hardship would it work in entries of this character where there are 10 deferred payments to start with, if there was no relinquishment? What harm would it do if there was no relinquishment of this class of entries at all?

Secretary FISHER. The only harm would be that the entryman having gone in and cultivated this one-eighth and two-eighths successively, and having gotten the land cleared and the ground actually under cultivation, and completed his home, he would have no way at all of being paid for it. Now, if we could devise a plan under which we could check the good faith and necessity of that entryman, showing that his entry, in the first place, was made in good faith, and, second, the reason for the relinquishment, that situation might be remedied.

Mr. FERRIS. That same argument would address itself as against relinquishment as well.

Secretary FISHER. You see, under the the homestead law, a man does not have to do any cultivation during the first months of his entry, but only during the first two years. He may have nothing but a garden and his house may be nothing but a shelter. All he does is to prove some general compliance with the law, and the department has been exceedingly liberal in the construction of what may be done with regard to cultivation during the first two years. If he stayed on for five years, and the entryman showed that he had cultivated the greater portion of his cultivable area, the department does not raise any question as to what he may have done during the first two years in regard to cultivation. But, if we were to announce that he is free to relinquish any time after two years, we must have some provision in regard to cultivation, otherwise we will throw the door wide open, and, certainly, if that principle is to be applied to the homestead laws, it would become susceptible to great abuse.

Mr. FERGUSSON. Do I understand that the bill of the Secretary excuses the entryman from actually living on the land during the first two years?

Secretary FISHER. This applies only to irrigation cases; but, with some changes, I am perfectly willing that it should apply to other cases.

Mr. FERGUSSON. The homestead laws should also be changed in that respect. We have a peculiar condition in the eastern part of New Mexico, where a great many settlers have come in and are attempting dry farming, and when they do get some rainfall they are successful, but in other seasons they have not been successful. I think the rule suggested by the Secretary would be useful in my country, where the crops of the settlers fail and they are obliged to come into town during the winter to get something to do. Many of them come into Albuquerque during the winter to make a support, because, perhaps, during the preceding year they may not have been able to do anything at all on their claims. Now, if this provision that has been suggested here could be made applicable to them it would help immensely. As I understand it, this suggestion was made the last time the Secretary was here; that is, that after two years they would be able to hold the title and try to cultivate the one-eighth of the area required. As I understand it, the Secretary would be liberal in the matter of construction, and perhaps not require every acre of the 20 acres to be cultivated annually, and that they would be excused from the two years' residence. But, would that be extended into three years in case of necessity? Might it not be modified so that in case a dry year strikes in, after two years, say, that they had some arrangement with the General Land Office by which they could make a showing, and after making a satisfactory showing they might be excused? Take the case of a man who goes in, builds his house, and cultivates practically 20 acres of his entry, and then a dry year comes when he fails to make a crop. In such a case why could not the entryman be excused for the winter months so he might go and get some employment?

Secretary FISHER. I am very much in favor of classifying the public domain—that is, the entire public domain in accordance with its real character, and according to the highest and best use to which each tract is adapted. Then make a law that would cover that kind of entry, whatever it is. For instance, if we state that certain lands, according to the survey made of them, are best adapted to dry farming, and upon which dry farming entries should be made, I think we could prepare a bill somewhat along the line suggested by Mr. Fergusson that would recognize the facts and conditions surrounding that kind of cultivation and make the law applicable to such facts and conditions, so that if a man can not cultivate enough under the dry-farming process, because he can not cultivate it for climatic reasons, then I think he ought to be excused. But it ought to be done under a law that would be peculiarly applicable to that class of entry and not under a general law and then have that applied to irrigation, timber, and other entries, and then leave the department with the necessity of trying to work out administration rules and regulations to cover each particular condition.

Mr. FERGUSSON. I asked the question for this reason. I am trying to draft a bill with reference to the dry-farming entries, because

almost the entire eastern part of New Mexico is a prairie country, with no possibility of irrigation. Thousands of settlers have come in there during the past 10 years, and it is to meet the difficulties I have suggested that I am trying to prepare some bill along that line. Now, there is another portion of New Mexico lying next to the panhandle of Texas, where, as we approach the mountains, there are some great depressions where water is near the surface, and where they can pump it not more than 20 feet. Now, do you think that a bill might be prepared with reference to irrigation under that state of circumstances, where they will not have to rely upon rainfall altogether, but may supplement the rainfall by pumping the water a very short distance?

Secretary FISHER. There is no reason why they can not enter that kind of land. How would you have it classified—as dry-farming lands?

Mr. FERGUSSON. They take the land under the general homestead law. The question is whether they can not have an act, general in its nature, but intended to apply to that section of the country, where there is no possibility of having surface irrigation and where they have to rely upon rain water, supplemented, as I have said, by pumping water this short distance.

Secretary FISHER. What change do you want in the present homestead law for such an area as that?

Mr. FERGUSSON. Well, they must cultivate 20 acres. The soil is rich in this section, in the low valleys where the water is near the surface, and a man might go to work and sink a well and use a small pump that would irrigate 10 acres. He could make a splendid living with that. What I have in mind is whether the general law could not be modified so as to permit this man, who has to go to the expense of installing a pump, to cultivate less than 20 acres.

Secretary FISHER. What do you want to give him on each homestead—320 acres?

Mr. FERGUSSON. Yes, sir.

Secretary FISHER. Well, if 10 acres will support the man why not let somebody else have the remainder?

Mr. FERGUSSON. My idea is whether the entryman should be required to cultivate the 20 acres where he has gone to the expense of installing a pump. Would he be required to cultivate more than 20 acres——

Secretary FISHER. He will not under the present law, unless he wants to get 320 acres.

The ACTING CHAIRMAN. The homestead law would be applicable to that case?

Secretary FISHER. Yes, sir.

The ACTING CHAIRMAN. Referring to the question of cultivation, how much land is cultivated each year?

Secretary FISHER. Under the general homestead law, I expect the general average is below 20 acres.

Mr. MONDELL. It seems to me that the condition suggested is met under the homestead law and regulations. As I understand Mr. Fergusson, he desires that the entrymen shall not be required to cultivate the amount now provided under that law, because of the fact that in some cases the entryman may want permission to irrigate a smaller area, and that the entryman by so doing would not be held

as subject to contest. Now, the department has held that if a man can by some extraordinary or unusual means irrigate as much as 40 acres, he does not by so doing jeopardize his entry, and it seems to me that that is a very wise holding. Your regulations provide that where the lands are not irrigable in the general sense, nevertheless, that the irrigation of 40 acres of that tract would not take it out of that class. Now, in some cases the entryman on 320 acres can impound a little flood water and irrigate a few acres, and that does not impair his entry, because it does not change the character of the land.

Secretary FISHER. I am not sure that the regulations cover 40 acres in that way, but, at all events, it is a very simple proposition, and if a man has every acre under irrigation that is susceptible to irrigation by means of pumps, and there is some requirement which makes it a hardship on the man to do that, that situation ought to be taken care of. I would prefer to classify the lands as homestead lands, and not enlarge the homestead lands.

The ACTING CHAIRMAN. On behalf of the committee I wrote the Secretary a letter calling his attention to two or three other matters.

Mr. RAKER. I want to get one matter clearly upon the record, Mr. Secretary. Referring to your statement a moment ago that if a man did not pay for his water rights, why, of course, it is shut off. In other words, on these privately owned lands under the Reclamation Service, if they do not pay for the water, no water is furnished. Now, what I want to know is whether with regard to reclamation projects, there is any selling of the water right as an independent title?

Secretary FISHER. No, sir; not as I understand it.

Mr. RAKER. In other words, each right is appurtenant to a certain piece of ground, and it becomes appurtenant to that piece of land?

Secretary FISHER. Yes, sir; and in no instance is it separate from it.

Mr. RAKER. And a mortgage upon the water right, covers the entire water right of the land?

Secretary FISHER. I so understand it.

Mr. RAKER. I want to make that plain—so there is no divorcing of the water right from the land?

Secretary FISHER. That is as I understand it.

Mr. RAKER. One further matter—do you not believe that this bill ought to provide some mode or method by which it would be stated that the money borrowed was for the purpose of paying the Government the rental for the water?

Secretary FISHER. No, sir; I do not think so. I do not care what the entryman borrows it for, and I am perfectly willing that the Government shall take its risk along with the bank. If the piece of ground, after it has been put under cultivation for five years, or after five-eighths of it is under cultivation, and the man has lived on it for three years, and has paid one-half of the total water charge, if that is not a good security for the Government, somebody has made a serious mistake. There is no reason why the Government should ask any better security than that. Now, if the entryman goes out and borrows money from the bank, I do not care what he does with that money. He can borrow the limit that the bank will lend him, and all I think we should ask to know is whether he has paid one-half of the water charge.

Mr. RAKER. Ought there to be a provision that the banker, for instance, should lend it to but one settler or entryman, and not enter into a general business in loaning money and taking mortgages on the lands generally of a particular reclamation project?

Secretary FISHER. I do not care how many there are.

Mr. RAKER. What provision has the department made, or what provision is it making, in relation to the power developed by reclamation projects? I mean water power. What provision will you make in this bill covering that proposition, and how will it affect the water power developed by the project? Very extensive water powers are being developed by virtue of these projects, and I desire to know whether that power so developed will be turned over to the project?

Secretary FISHER. That all depends on the arrangement. It may or it may not. Of course, the water power that is generated by the project itself is regarded as an asset of the project, and what is going to happen at the expiration of the 10-year period during which these charges are to be paid all depends on the construction of certain general provisions in the reclamation law which have not yet been construed.

Mr. RAKER. That matter was fully presented to the Committee on Irrigation day before yesterday. Now, after the entire assessment due for the first five years is paid, is the Government to turn the water power over to these people. The water power may be more valuable than all the money expended upon the project——

Secretary FISHER. That might be true.

Mr. RAKER. What arrangement has been made to provide that this power shall become the property of such settlers on that particular project?

Secretary FISHER. The general law takes care of that proposition. The power is a part of it.

Mr. RAKER. I asked Mr. Newell about that, and he was not quite definite upon that point.

Secretary FISHER. Perhaps Mr. Newell did not want to commit himself, but I have no doubt about it.

Now, there is another matter: In these early projects, and, in fact, down to date, no provision has been made for drainage, and that, in my opinion, is an absolutely indefensible situation. I think the taking care of the surplus water is just as important as putting it on the land; but as yet no general provision has been made on that subject. This failure frequently results in disaster to the individual entryman from which he can not protect himself. It is all wrong, and the reason for it was that the then Secretary of the Interior, Mr. Hitchcock, took the view of the law that the reclamation act, which was really narrow in its terms, did not refer to drainage. This situation was due to political jealousy everywhere that the Government could not take part in drainage, and that all we could do would be to irrigate the land and then let the settler take care of the drainage. I think that is all wrong. Now, we have changed that, and unless somebody tells the present Secretary of the Interior something to the contrary, the reclamation engineers will devote the greater portion of their time to taking care of the drainage. Now, the water power is a part of the project; it is an incident to it, and it is going to pass, so far as I can see, to the association of settlers or to

the individuals composing that association of settlers. Just how it will be done I do not know. I presume we will have to come to Congress for additional legislation. It does not bother me especially, for this reason: One of two things will happen—it is either going to pass to the settlers or it will remain in the Government. I assume that Congress is going to do the fair thing, and if it is a fair proposition that it shall pass an act by which the power will be turned over to the settlers, under appropriate conditions, it will be done. It might be worked out under the present law. The present law is pretty plain, and I think sufficiently so to make it clear that the money paid on the projects by the Government and repaid by the settlers represents in reality the settler's money, and that the settler is entitled to the benefit derived from it.

Mr. BAKER. Now, that project has been started and the unit fixed, which is a farm unit, and the estimate as to the cost is fixed and the settlers have gone in and filed under this project. Now, an electrical power has been developed. Do you think it would be fair to add 30,000 or 40,000 acres of land more to the project and use this electrical power to pump water to this additional land and add that much more to the original project under which these first settlers filed?

Secretary FISHER. Do you mean whether it would be fair for the Government to do that?

Mr. BAKER. Yes, sir.

Secretary FISHER. It would depend upon whether or not the Government was trying to get back the money that has been expended. Where the charge has been based upon the estimated cost of the original project and it is found that this charge is less than the works have actually cost I think it would be entirely fair for the Government to do so. We have many of these projects that have been entered into by the Reclamation Service where the settlers have gone in in advance. They know in the beginning that the lands were thrown open to entry and the settlers did not have to wait for water on the land. In many of these projects they complain, with a great deal of justice, against a situation which is partly due to themselves. They complain that they have been out on these lands for so many years and that the water was not put on and that they have to live from hand to mouth. We have stopped that by providing that we would not open these reclamation projects until the land was ready for the settlers, but the situation created in that way, in the first instance, nevertheless remains a very important thing to take into account.

Now, the Reclamation Service being pressed by these people to get the water on the land quickly, of course, had to fix the reclamation charge before the work was completed, and they have found in many cases that as they were hurried with this work when they got through with the project the cost had been underestimated, and the Government will be out a substantial sum of money because of the difference between the actual cost of the project and the collections made in advance. I think in such cases as that, whether the water power is an asset of the Government or of the settlers, that it should be used by the Government in pumping water on other projects or additional areas for the purpose of compensating the Government for this dif-

ference between the actual cost of the project and the charges collected.

Mr. RAKER. Would not that be putting an extra burden on those who file on the project?

Secretary FISHER. No, sir; it would simply be not giving them an asset to which they are not entitled; it is simply making a resource of the Government pay the cost of the project.

Mr. FERRIS. Do they or not, upon entering on these reclamation projects, agree to pay a specified sum or do they not specifically agree to pay whatever charges may accrue against them on account of the project?

Secretary FISHER. No, sir.

Mr. FERRIS. They should not be required to do that in order to keep the reclamation fund intact?

Secretary FISHER. Yes, sir; and if by making the charge that reclamation fund can be kept intact, it must be done.

Mr. FERRIS. Is it not contemplated by the law that it shall be intact?

Secretary FISHER. Yes, sir. The trouble has been due to a lack of oversight of the settler who comes in before the project is developed and wants to know what the reclamation charge will be. The settlers come in and demand to know what the reclamation charge is to be, and the Reclamation Service under this pressure, and in attempting to meet the demands of the settlers, have frequently underestimated the charge. We have had much difficulty because we have been permitting them to come in before we knew what the project was going to cost. Now, we keep them off until the project is developed and then are in a position to tell them what it has cost. Now, of course, there is an indefinite charge on account of maintenance and operation which enables us to take care of everything that we can properly charge under those heads.

Mr. FERRIS. How much has the reclamation fund been decreased by reason of errors of this kind?

Secretary FISHER. We have not the complete figures now, and it will be difficult at this time to supply that.

Mr. FERRIS. Is it a large sum?

Secretary FISHER. I should imagine that it is a sum of some size.

The ACTING CHAIRMAN. The increased price of everything, including labor and unforeseen casualties, has increased the cost of nearly all these projects, has it not?

Secretary FISHER. The responsibility rests with Congress to prevent the loss, because we have been proceeding on this unfortunate theory of having this thing done in advance of the completion of the projects; that is, basing the charge on an estimate instead of knowing what the cost was and charging the settlers just what it did cost. So, we can not blame anybody for it. It is rather remarkable, in my opinion, that we have not had more serious consequences than we have had.

The ACTING CHAIRMAN. Do you desire to say anything concerning what was mentioned here the other day in reference to the general homestead law, aside from reclamation projects? There is some discussion of the matter in your annual report especially in the matter of the requirements as to residence and cultivation.

Secretary FISHER. There are two things in the so-called Jones bill, in the Senate, that are unfortunate, and I have considered them. The first provides that the homesteader can be absent from his homestead for six months every year. I think that is a bad law. If the settler is compelled to leave his homestead during the winter months, then specify the winter months. There might be a provision in the law that would enable him to be away from his homestead where the necessity existed without extending a general invitation to all settlers to be absent from their homesteads. I think that would work very badly, because right there you create a situation where the settler will have his interests away from the homestead. The settler would be likely to have under that sort of provision his schools and interests somewhere else. You would create such a situation as I referred to this morning where the so-called settler would be living 1,000 miles away from his homestead.

Mr. RAKER. Have you taken into consideration the condition that exists in many of our western States where they are centering the schools in the larger places? In fact, they have little summer schools in the country, but the winter schools are in the larger places. Now, why could not the homesteader be permitted to take his family to the town for four or five months in the year, where they may have these school advantages, and the homesteader could go back and do the work on the farm in the proper season?

Secretary FISHER. That would not mean a change in residence. If the situation involves nothing more than going to a town, say, 15 miles away and placing the children in school, that does not affect the residence. But the question is whether you create a condition where the man may live six months on the farm and six months somewhere else, and in doing so offer encouragement to people to take the land, clear a portion of it, and then sell it for a profit. Under such a system you will not have homesteads, but, rather, entries effected for the purpose of speculation. Now, if you have a case where an individual is justified in doing what you suggest, then I think there ought to be a provision in the law to take care of that situation; but I think that to offer an omnibus invitation to leave the homestead for a definite period of time this year and each year will work badly.

Mr. RAKER. I can not conceive of any good reason why a man should be compelled to live on his farm through the entire winter. It occurs to me that he could go to town and have a little residence or a little home there for his family and at the same time take care of his farm. He has not abandoned his farm, and must have his stock taken care of in his absence; but under the present conditions, if he he should happen to stay in town two or three days he is immediately in trouble.

Secretary FISHER. No, sir; not under the special regulations, nor even under the diabolical special agents of whom so much complaint is made, if they had called my attention to it. We would take into consideration the facts in the case. Any arbitrary final ruling that a man loses his residence because he happens to have slept out of his house for a day or two is an absurdity.

Mr. RAKER. But suppose he has moved his family to town and his family stays in town until the last of March. Is he not immediately jumped upon as having a home in town, and therefore as not maintaining his residence on his homestead?

Secretary FISHER. Not in any case that I know of. Was he living in town?

Mr. RAKER. He was at the farm off and on.

Secretary FISHER. No, sir; the ruling would be in his favor.

The ACTING CHAIRMAN. We have here several gentlemen from the West who may desire to ask the Secretary some questions.

Secretary FISHER. I want to finish first what I started to say with regard to this three-year law. It must be perfectly apparent that a provision permitting six months' absence would be throwing the gates wide open. Suppose we have not allowed a six months' absence. No law of that sort ought to be considered that does not require a man to cultivate a fixed proportion of his ground. Suppose you pass a law providing that a man can get title in three years instead of five years, provided he clears at least one-half of the land; would that help the entryman? In my opinion it would not serve the purpose anything like as well as the law I have suggested in the way of an extension of this irrigation proposition to the general homestead situation. Suppose we do not require that and you have no provision requiring the cultivation of a fixed specific amount of the land. You will not have anything. You would not get settlers at all. You would get men to do a sufficient amount of cultivation under the homestead law to give them a title. He might come in and say, "I can not meet the requirements the first year and clear up the land." In the second year he could say that he had just got started and that it was only during the last year that he had been able to cultivate the land. If you pass a law under which one year's cultivation is all that would be practically required, and indeed all that could be required under the law, then you would simply open all the lands in the West to omnibus entry, because after getting the titles they could sell to anyone. Under a law of that kind it would be practically impossible to check up all the possibilities for fraud and abuse, and it would be throwing the gate wide open. I would like to see real settlement on the public domain.

Mr. MONDELL. Mr. Secretary, there are a number of different propositions to which I would like to call your attention. Your suggestion that for the first two years residence shall not be required, and the Senate's suggestion that the homestead settlement be only three years, would each require further amendment of the homestead laws in order to make either of those changes workable.

Secretary FISHER. Yes, sir.

Mr. MONDELL. There is a plan I have had in mind; that is, relieving homestead entrymen of the necessity of residence during the winter months.

Secretary FISHER. I was just discussing that matter in your absence. Did you have in mind the question of excusing him permanently?

Mr. MONDELL. I think that it would be well if he were excused during the winter at least the first three years of his entry. We want permanent settlement, and I have not been quite able to bring myself in line with your suggestion for allowing two years without any settlement. I am a little afraid of that.

Secretary FISHER. Are you afraid of that on irrigation projects?

Mr. MONDELL. I think, as applied to irrigation projects, that there would be less danger of abuse under it. My thought was more par-

ticularly with regard to other classes of entries. While we would like to see the entryman on his land establishing a residence, it is difficult for the entryman to stay there during the winter. Of course, as soon as he gets enough stock around him he is compelled to stay, and it does not require a law to hold him, but for the first two or three years, at least, it is trying to hold him to residence when he might be away earning some income. As it is now, if he remains away for a considerable time he is subject to contest and, while the department may protect his rights, the expense of the contest is put upon him.

Secretary FISHER. I do not object to a provision in the homestead law which, during the first two years or possibly during the first three years, would permit the entryman for any one of a number of enumerated good causes to be absent during certain specified months.

Mr. MONDELL. We have even been compelled to pass laws almost every winter for a number of years granting absence during the winter months.

Secretary FISHER. What do you call the winter months?

Mr. MONDELL. The bill I introduced provided for an absence from December to April, inclusive, or five months. It is possible that in southern latitudes that would be too long; but, in any event, the entryman ought to be on the land in time to begin his spring cultivation.

Secretary FISHER. Personally I do not care much about making that provision. If we are sure that the reason given for his absence during the winter months is the real reason, the course would be plain. What I object to is an omnibus provision without any reason. I think that sort of provision is wholly unnecessary. If you give the entrymen the right to live away from the land, they will create their interests away from their lands and build their schools away from the lands. They will do it deliberately, and the result is that you will afford an opportunity to people to acquire the property when they do not want to live on it at all.

Mr. MONDELL. You spoke of the matter of schools. I presume that you have taken a lively interest in education and that you know the tendency, at least during the last few years, is in the direction of the consolidation of schools. In my State we are reaching out along that line, and this is the condition we are gradually getting to: The people construct small schoolhouses for summer use and the smaller children attend these schools. But the tendency, as I have said, is to establish the better schools or the schools of the higher grades in town, and the people bring their older children to town for instruction during the winter months, because these children can not always go to school during the summer.

Secretary FISHER. But the families do not move any great distance.

Mr. MONDELL. But there is always the question, even if some member of the family is on the homestead, whether or no it is subject to contest. I have had my attention called to quite a number of cases of that kind. In one instance the father of the family went away to work in a mine during the winter and the entry was contested, though the mother and children were on the place.

Secretary FISHER. I want to call attention to one thing, and also to some provisions in the Canadian law. There has been a good deal said about it, and I think, perhaps, the committee would like to have its attention called to it.

In the United States there is no reservation after classification, whereas in the Dominion of Canada there is a general reservation of all minerals. The eligibility requirements in the United States are citizenship, 21 years of age, or head of family. In Canada the eligibility requirements are citizenship, head of family, or 18 years of age if male. In the United States the amount is 160 acres, and it is 160 acres in the Dominion. The requirements as to surveys are the same in both countries. In the United States the settlers on unsurveyed lands have a preference right of entry, which must be exercised within three months after the survey and opening of the land. In Canada the settlers have a preference right for six months; occupation after survey without entry within time gives no right, and the occupant may be treated as a trespasser and the improvements forfeited. In the United States the time for perfecting entry is six months; in Canada the time for perfecting entry is six months, but on specific cause shown entry may be protected from cancellation for a further period of six months. No annual proof is required in the United States, but in Canada the homesteader may be required, by declaration or otherwise, to show each year the performance of his homestead duties. In the United States the grounds for cancellation are that the entry was made for the benefit or the use of another; that it was allowed through error, misrepresentation, or fraud; and failure to comply with the statutory requirements.

In the Dominion of Canada the grounds for cancellation are that the entry was made for the benefit or use of another; that it was allowed through error, misrepresentation, or fraud; because of its value for timber; and failure in any year to fulfill the requirements of the law. In the United States condemnation is allowable of lands needed for Government reclamation construction, and in Canada the entry may be canceled if the land is necessary for the protection of the water supply or for the location or construction of works necessary to the development of water power. In Canada compensation may be allowed for improvements. In the United States the requirements are five years' residence and cultivation, while in Canada the requirements are three years' holding with residence at least six months in each of three years, to have erected a habitable house, and to have cultivated such area as is satisfactory to the minister. In the United States two credible witnesses are required to make proof, while in Canada proof consists of the sworn statement by the applicant corroborated by two witnesses. In the United States proof must be made within seven years, while in Canada it must be made within five years.

It appears, however, that in the Province of British Columbia there is a different requirement as to length of residence than under the regular Dominion laws. In the Province referred to the regulations fix the period of residence at five years and require an actual residence of at least six months in each year. The area to be entered in most of the divisions is 40 acres.

Mr. MONDELL. Do you refer to these as the Dominion laws?

Secretary FISHER. Yes, sir; I am calling attention to the difference between the laws of Canada and those of the United States on this subject.

Mr. MONDELL. Each Province has its separate legislation on the subject. Are you quoting now from the Manitoba law?

Secretary FISHER. Yes, sir; and that is the section to which most of our settlers have gone.

In this connection it is interesting to observe in the annual report of the Canadian department of the interior for the fiscal year ending March 31, 1910, on page 8, the tabulated statement of the inspector of Dominion land agencies, showing the principal work transacted by homestead inspectors in Manitoba and Saskatchewan for that year. It appears that in these two Provinces there are 29 homestead inspectors.

In the seventh field division of this office, which embraces a territory much greater than the two provinces referred to there are employed 23 field men, this including special agents, mineral inspectors, tory much greater than the two provinces referred to, there are emspectors, there are ranch inspectors, timber agents, and coal-land inspectors.

Mr. MONDELL. You are comparing it with one of your field divisions?

Secretary FISHER. Yes, sir; I am trying to get something that is comparable or something that would be a basis for comparison.

On page 4 of this annual report the inspector of Dominion land agencies states:

> Though during the year there were 422 less entries (which include homesteads, preemptions, and purchased homesteads) in Manitoba and Saskatchewan, there has been an advance of almost 3,000 cancellations, which shows the close watch being kept on those holding entries and a correspondingly increased interest on the part of intending settlers.

This statement seems to me to be particularly interesting in view of the criticisms which have been made of the field force of the General Land Office.

It appears that in addition to homestead inspectors there are in the Provinces of Manitoba and Saskatchewan 34 "Dominion land subagents" whose duties, compared with our system, seem to be similar to those of registers and receivers. These officers are directly under the supervision and control of the minister of the interior.

In addition to the right of homestead there is a provision for a preemption entry of 160 acres, provided the land sought to be entered under the preemption lies alongside the homestead entry. The requirements for preemption are completing the requirements requisite to obtaining letters patent for a homestead, residence on the homestead or the preemption six months in each of six years subsequent to date of entry for the homestead, cultivation of 50 acres either on the homestead or preemption, and paying $3 per acre. Preemption may be made by one who has a homestead and does not hold or has not assigned his right to receive patent for a preemption. There is also a provision for a purchased homestead for anyone having obtained a homestead but who can not make a preemption because of lack of available land adjoining his homestead or who has otherwise exhausted his right for a free homestead. The requirements are residence on the quarter section for six months in each of three years subsequent to the date of entry, cultivation of 50 acres, erection of a house valued at $300, and payment of $3 per acre.

In going over this matter with the Commissioner of the General Land Office, Mr. Dennett, and discussing these things with him the other day, I asked him to give me this memorandum, which discusses

the general condition, so that your committee might have in available form some of the marked and distinguishing characteristics of the Canadian land laws, showing wherein they differ from ours. We have found some things that they require which are much more stringent than anything we ask.

Mr. DENNETT. I desire to call the attention of the committee to a provision in the Dominion land act. It is on page 8 of this pamphlet from which I read:

Sections 4 and 6 of an act to consolidate and amend the acts respecting the public lands of the Dominion:

SEC. 4. If entry is obtained for land which, though not reserved at the time, is ascertained to be valuable on account of merchantable timber upon it, the minister may, within six months of its date, cancel the entry.

SEC. 6. If, after entry is obtained, it is ascertained that the land entered for, or any portion thereof, is necessary for the protection of any water supply or for the location or construction of any works necessary to the development of any water power, or for the purposes of any harbor or landing, the minister may, at any time before the issue of letters patent, cancel the entry or withdraw from its application any portion of the land entered for, but, where the land is required for the location or construction of works necessary to the development of any water power, only in so far as the land necessary for that purpose.

Mr. MONDELL. Mr. Chairman, is it your intention to go on for some time?

The ACTING CHAIRMAN. That is subject to the pleasure of the committee and the Secretary.

Mr. MONDELL. I thought if we could go on a little further we might very properly take up with the Secretary at this time, while we are discussing the question of special agents, the matters treated of in the bills that have been called to his attention. I refer to the bills H. R. 8781 and H. R. 18235. The first is a bill introduced by me regulating the suspension of final proof on land entries and providing that no proof shall be protested except for good cause, and that the entryman shall be notified thereof.

Secretary FISHER. It is our intention to send in reports on these bills.

Mr. MONDELL. You have already sent in a report on the bill H. R. 8781, and the report is decidedly adverse. Some members of the committee desire to discuss the matter—at least briefly—with you at some convenient time.

Secretary FISHER. I would be glad to discuss that now. There are one or two bills that I have just mentioned, and of course you can take up whatever bill you desire. There is a bill for a second homestead, and I think perhaps there are several of them.

Mr. MONDELL. The bills I have referred to are bills that relate to the duties of the special agents.

Secretary FISHER. Then there is also a bill with regard to appeals from the department. That I regard as a matter of importance. With regard to the appeals matter, I think perhaps we might discuss that for a minute or two. As the law now stands, and as it has been construed by the courts, the courts exercise the right to review the action of the department in cases where the matters involved are matters of law.

Mr. MONDELL. To what extent?

Secretary FISHER. To the extent of taking any case where there is clearly a question of law, and when there is a question of law involved they take jurisdiction and consider whether they will mandamus the Secretary or enjoin him, as the case may be.

Mr. MONDELL. I did not understand that there were any such cases in which the courts took jurisdiction except in cases where the patent has been issued. For instance, your department recently reversed, or virtually reversed, the former holding of the office for many years with regard to what is known as constructive residence for the first six months after entry. Now, that is clearly a question of law, but the courts would not take jurisdiction of that question.

Secretary FISHER. Whether they would or not, and whatever the limitations on the jurisdiction are, is a question pretty clearly involved in a case now pending, I think, in the Supreme Court for adjudication, and we will have a decision which will pretty definitely state what the powers of the courts are with regard to jurisdiction of the department's rulings.

Mr. MONDELL. My bill provided for reviews by the courts and limited the review entirely to questions of law.

Secretary FISHER. I did not so understand it.

Mr. MONDELL. But the committee in reporting on the bill added questions of fact. The difficulty we find is in getting any question of law or fact before the court, except after the patent has issued, where, of course, the patent may be attacked within a certain length of time on certain grounds.

Secretary FISHER. The fundamental question is whether it ought to be reviewed or not. What do you want in the way of a tribunal? What kind of a department are you going to make of the Interior Department, and what sort of a bureau are you going to make of the General Land Office? If you are going to have any review whatever under a broad omnibus bill, more especially under the bill reported granting a review of questions of fact, I might say that under whatever Secretary of the Interior you may have, or whatever Commissioner of the General Land Office you may have, the difficulties about which complaint is made are going to be infinitely worse than they are to-day. If they are required to prepare these records so as to show what the facts are, in such a way that they will be admissible under the rules of evidence to determine the appeal by the tribunal sitting as a court and passing upon the questions under the technical rules of law, you are going to multiply the work of the General Land Office a hundredfold, and patents will be very much more slowly issued. You can not possibly avoid that situation. Instead of having the questions determined speedily and informally under the system now obtaining, and under which a vast majority of the cases go through without protest and very quickly, you would have the reverse, because we must have everything pertaining to these cases ready for appeal to the court. The result would be that the Commissioner of the General Land Office and everybody connected with it, down through the field agents, are going to have the evidence in court shape. We can not avoid it.

Mr. MONDELL. I agree with you entirely on that matter. All that seems necessary to me is to have a review as to the law, but, referring to the action of the committee on the bill, when the committee began to examine this matter some gentlemen said to us: "That will not

do at all. The Secretary may be so careless of the interests of the Government that he may ignore absolutely violations of the law on questions of fact, and we must be in position to reverse the Secretary on questions of fact in the interest of the Government." I agree with you as to a review of questions of fact, but it has seemed to me and to other members of the committee that a review of questions of law is important.

Now, let me call your attention to instances we have had of late years going to show the importance of a review. We have, for instance, the law known as the act for the protection of surface rights of entrymen. Many of us think that the department has entirely ignored the last paragraph of that law, which provides that where the entryman has made final proof showing good faith and satisfactory compliance with the law he is entitled to patent. Where he has made final proof and there is no question of good faith involved, under that law he is entitled to patent. Now, in all cases, if there was any question of coal, they have insisted on raising the question of the coal character of the land, although the question was not raised up to the time of final proof. Now, in the absence of any appeal, we think that provision of the law has been ignored; in fact, continuously ignored. Many of us think that on this question of constructive residence the department ought to have had the decision of a court. We scarcely ever pass a law that there is not some important question raised in connection with it, and the decision or decisions, it seems to me, are not always consistent with either the letter or the spirit of the law; and unless the department can be persuaded to modify its first view, there is no possible way of securing a reversal of the decision.

Secretary FISHER. Now, you think, therefore, there ought to be an appeal on the law and that that appeal ought to go up to the Supreme Court?

Mr. MONDELL. That would not be my idea.

Secretary FISHER. Where would it stop?

Mr. MONDELL. I think it should go to some proper court and stop there.

Secretary FISHER. Where can it stop short of the Supreme Court of the United States? It would have to be in the Court of Claims or else be in the circuit courts all over the country, where the department would have to try these cases.

Mr. MONDELL. Personally I would prefer to have all of these cases go to one court, and that court should be here.

Secretary FISHER. To a new court or to the Court of Claims?

Mr. MONDELL. I would not suggest the Court of Claims under any circumstances. The court I did suggest in my bill was the circuit court of appeals of the District. The difficulty is here, and you realize it in the department, that the department, being the agency through which the investigation is carried on, is placed in the rather curious attitude of being investigator, judge, and juror in the matter.

Secretary FISHER. That is true and it is not. Of course, what you are doing is dispensing a certain amount of bounty of the Governnment. You are asking in the laws that you pass that the United States Government, being the owner of the public domain, shall permit individual entrymen or private interests to acquire these lands under certain conditions, and you are intrusting the adminis-

tration of that law to an administrative tribunal or an administrative office. You are doing just what has been done in every such case; what was done in the case of the water powers developed in navigable streams, which were put under the administration of the War Department, and what has been done with innumerable other questions and concerns that have been committed to the administration of the Department of the Interior and the Department of Commerce and Labor all over the country. Now, what you are trying to do is to treat the matter as though it were a litigation or controversy between the United States and the private individuals. Now, it is not anything of that kind. It is a question of rules and regulations and administrative procedure, under which private individuals are allowed to acquire something to which they have no claim otherwise, and, in my opinion, it ought to be entirely an administrative proposition. I do not believe that it ought to be a court question at all, and I do not think you will escape the difficulties you have pointed out if the method you suggest were adopted.

Now, the determination of the questions of law will always depend upon the particular state of facts to which it has been applied; and how are you going to consider a particular law without reference to these particular facts to which it has been applied? You are going to have the courts to say, "Here are the facts," and they must pass on the evidence and the weight of the evidence, and you are going to get into that exact situation in every case appealed. You can not separate questions of law from questions of fact, even though you attempted to make it so under the law. There are certain questions of law and constructions of law which the courts now take jurisdiction of, and which the department itself has construed, and, in my opinion, that takes care of everything that ought to be taken care of. In addition to that, however, the Department of the Interior, under my administration—and I think it will be so under the administration of any competent Secretary of the Interior—will call upon the Attorney General's office for an opinion as to the law in any case of importance, where there really appears to be a question of doubt concerning the construction of the law. If you should apply to the Secretary of the Interior to pass upon a case, and it should be carried to the Attorney General for an opinion, you will be getting just as competent an interpretation of the law and just as disinterested interpretation of the law as you would in any court of appeals or the Court of Claims or in any circuit court.

Mr. MONDELL. Of course, that is a new thought. I did not know that the department had to any considerable extent referred questions of law to the Attorney General.

Secretary FISHER. Oh, yes; we do that right along. Now, in the very question you mention, the question of a change in the ruling with regard to six months' nonresidence. The question there was whether the five years included the six months during which absence was permitted, so that only four and one-half years would be required, or whether, under the peculiar language of the law, it required five years' residence, beginning after the first six months during which absence was permitted. I considered that question very carefully not only at the office, but I took the papers home with me. I considered that question very carefully with a view to determining whether or not it was, in my opinion, a question that might be sub-

mitted to the Attorney General. I confess that when I got through it seemed so clear a question of law that I did not see any object in transmitting it.

Mr. MONDELL. I think you realize this embarrassment under which an administrative bureau always labors——

Secretary FISHER (interposing). Pardon me, but before you go into that let me say that in the Land Office, in the Department of the Interior, is a board of law review, or board of review. Now, there should be a board of review of sufficient dignity of character and professional equipment and standing to which all those cases coming up to the Secretary's office could be referred. These cases should be referred to that body of men, and they could pass upon them, and they could be made to that degree separate and distinct from the office force. We have a board of law review in the land office, so far as it goes, but they have to pass on the whole mass of material that goes along with the cases, and they are not paid adequate salaries. Considering the magnitude of these questions, we ought to have a thoroughly competent board properly paid, and we ought to have in the office of the Assistant Attorney General for the Interior Department a number of competent assistants, who would study all these cases, and to whom matters of this sort could be referred and worked out. I think if you had a tribunal of that kind, you would get far better results than you would under this proposed court of appeals. Then you would have to follow all these cases in the courts, and somebody would have to prepare the cases for argument——

Mr. MONDELL. This is the embarrassment that the administrative bureaus labor under. What is the administrative officer to do in the case of a law commanding him absolutely to do a certain thing, while a public sentiment declares that he shall ignore it. Some of the difficulties arise from the fact that an administrative bureau is a political bureau, at least in the eyes of the public. In the eyes of the public what an administrative bureau does is the act of the administration or the party. I have seen the public-land laws administered for something over 40 years, since I lived as a boy on a homestead. I have spent 16 years here, 18 months of that period spent in the General Land Office. I have seen the pendulum swing back and forth in matters of administration, or in matters of policy of administration. I have seen the department, in the face of a very strong public sentiment based largely on hysteria and misinformation, hesitate to carry out a plain provision of law because to do it would in many cases subject the department to severe criticism. The courts are not entirely free from such influences. I think it was Mr. Dooley who remarked that whether or no the Constitution followed the flag, the Supreme Court followed the election returns in some cases. But, to a very considerable extent the courts are relieved from undue influence of temporary gusts of public opinion. It is the whole duty of administartive bodies, as well as judicial bodies, to determine what the law is. If the law is too liberal or too strict, the criticism should be on Congress and not on the administrative department; but it is not always so, and for that reason in seasons of clamor, often started by a few people, the administrative bureaus hesitate to decide against such clamor. If a court of proper dignity finally decides that such and such is the law with regard to a given matter, it would settle it to the extent that it

would become the duty of Congress to change it if it were wrong and required changing. We have all noted the swinging of the pendulum in departmental practice. We have been introducing bills to meet what we conceived to be unfortunate decisions and waiting and hoping for a change of view in the department itself. Now, I have never had an idea or a notion that there would be any considerable number of appeals under the bill providing for appeals on questions of law, because a few cases would settle all important questions. The court would lay down a rule and give us an interpretation of the law that the department would be bound by. Of course, if Congress considered it wise to do so, the law could be amended.

Secretary FISHER. Yes, sir; but that is not a question of law. You do not merely get a construction of the law. That is not what your bill provides for. Your bill provides for an appeal on questions of law arising in particular cases. You know that is just as different as daylight is from darkness. You know that cases will be appealed even when it is known just what the law is, and the courts will be simply clogged with them. Men come in my office every day on questions of rehearing, pleading for a rehearing, and sending Members of Congress and of the Senate to suggest that they ought to have a rehearing. They come to us right along and say, "We have no question about the law or the construction of the statute; that is the way it ought to be construed; but, as applied to our case, the decision is wrong." In every case the court would have to decide what was a given state of facts as disclosed by the record, and then determine what the law is as applied to that state of facts. The result would be that, while the department might not be reversed, and while there might not be any review of the questions of fact as disclosed by the record, unless the Department of the Interior made a careful detailed finding of fact and was exceedingly careful in every case to see that every material fact was included in the statement, the court could do anything it chose with regard to the particular case, saying that upon that state of facts, dealing with that specific thing, the law is such. Of necessity, the fact would be involved in any construction of the law as applied to any particular case. Now, you will not get away from it; you will simply have case after case go into the courts, and you can not possibly avoid it, in my judgment. Take the State where the supreme court does not pass on questions of fact, but where there is some provision that intermediate courts of appeal can review the fact, but not the supreme court.

You will find that the dockets of the supreme court, even in these States, are clogged with cases in which the litigants constantly contend that they do not want the court to review the facts, but say that under the facts as established in the record they are entitled to certain relief, or that under such a state of facts the court ought not to apply a given remedy against them. It always happens so. The minute you throw these matters open to appeal to the courts, you will revolutionize the whole character of the Department of the Interior. You will make it a litigating body instead of an administrative body, and that would be a fundamental mistake. But if you want to enlarge the functions, raise the character, and remove to one side the tribunal within the department, or the men within the department, who pass upon these questions, so as to make them just as judicial as possible in their character and remove them just as

much as possible from the field force and office force, I agree with you. There is another question to be considered in this connection, and that is we do not charge any fee. Before such a tribunal in the department the contestants would be on an equality in that respect; but if you provide an appeal to the courts, the result would be that the litigant with money to spend will drag the matter on until he wears out his less fortunate opponent. The litigant with money would always have that advantage of his less fortunate adversary.

Mr. MONDELL. As legislators, we are not primarily interested in the equities or the forms of procedure for entrymen under the land laws. That is an administrative matter clearly. We are interested, however, in the interpretations which the department place upon legislation. I often meet this situation in the departments in discussing matters with the gentlemen there: "Possibly that is the law, but how is it going to apply to John Jones in this particular case?" Now, as a legislator endeavoring to legislate intelligently, while interested in that entryman, the important thing to know is what did we do when we passed that statute. If it does not suit John Jones's case, it is either unfortunate for John Jones or indicates that we were not considering John Jones's case when we legislated. But, outside of the question of how it will affect John Jones's case, the important consideration is what did we propose to do. We find cases where, in our opinion, the department does not construe the law in accordance with what we had in mind when we passed the law, and sometimes we fear because of the fact I just referred to, of an overwhelming public sentiment demanding that the department have a care lest the law be construed too liberally. The law seems to be liberal, and the department withholds rights and privileges which we think the law granted.

Secretary FISHER. I wish you would cite me to any single section of any statute where you think the question on the facts properly warranted any other opinion, construing the law as you think it is. Let us find a single case.

Mr. MONDELL. I just referred to the recent decision under the homestead law as to constructive residence.

Secretary FISHER. That is just what I say. If you go into a court, you will find that true of every case where the language of the act is ambiguous. It is ambiguous, clearly ambiguous, and no two men would disagree about its being ambiguous. It comes into an administrative tribunal, and the administrative officers construe it a certain way. Now, if you should go into a court, there would be the same ruling in a case of that kind. The court would simply say that the language being ambiguous, it would be construed against the right of the claimant and in favor of the Government. If there were a clear case, you could count that as a clear case of misconstruction of the statute. As to the rulings of the department amending the law, you could count the instances on the fingers of one hand.

Mr. MONDELL. Well, I have referred to a statute which seems to be very clear.

Secretary FISHER. This provision reads as follows:

> Such locator, selector, or entryman who has heretofore made or shall hereafter make final proof showing good faith and satisfactory compliance with the law under which this land is claimed shall be entitled to a patent without reservation, unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

Now, Mr. Sheridan calls my attention to the instructions issued by the department for the carrying out of that act, and I find this language on page 2 of the instructions:

> Where satisfactory final proof has heretofore been made for lands entered under the nonmineral laws the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If at said hearing it is proven that the land is chiefly valuable for coal, and that the claimant knew that fact at the time of making final proof, the entry shall be canceled, unless the claimant shall prove that he was at the time of the initiation of his claim in good faith endeavoring to secure the land under the nonmineral laws, and not because of its coal character, in which event he shall be permitted to elect to receive patent with the reservations prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant shall be entitled to patent without reservation.

Mr. MONDELL. And yet it is a fact that every one of such entrymen was called upon to elect to take a surface patent, and for a long time that provision of the law was not adhered to at all.

Secretary FISHER. Now, as I understand it, what the entryman is called upon to make is a showing and, preferring not to make it, he is told that if he waives that and takes a surface patent he can have it without further delay. I see nothing to complain of in that regard.

Mr. MONDELL. If that were the fact, then, perhaps there would not be so much to complain of, but that unfortunately was not the practice under the statute. If all these cases were transferred immediately to the Fraud Division of the General Land Office, that would be equivalent to raising the question of good faith with every one of them, whether there was anything in the record to raise it on or not. Most of them we so transferred.

Secretary FISHER. Now, of course, I imagine from the fact that Mr. Dennett is rising that he wants to controvert that statement of fact. But suppose for the purpose of getting the point clearly established we concede that were true which Mr. Dennett says is not true. How would you remedy that situation if you had the remedy of an appeal to a court?

Mr. MONDELL. I would remedy it in any one of these cases. Certainly a man entitled to appeal could do so.

Secretary FISHER. But how could he appeal? He first must have his record made up. Would he appeal on the ground of the unreasonableness of the department's regulations? How would he get it in shape for appeal?

Mr. MONDELL. I think he could appeal from the demand made upon him to take a limited patent under these circumstances.

Secretary FISHER. But no demand is made upon him. He is simply told that that will expedite the action.

Mr. MONDELL. A circular was issued which called upon the special agents to secure these elections, so called, but it is more in the nature of compulsion.

Secretary FISHER. Suppose that is a case, and it is something I do not know anything about——

Mr. MONDELL. Mr. Schwartz sent out such a circular and stated that wherever possible election should be secured, but nothing was said to lead the entrymen to believe that this was not a matter of coercion.

Secretary FISHER. Suppose that were true. I had always supposed that Mr. Schwartz was being criticised for too much liberality in favor of the entrymen rather than against him.

Mr. MONDELL. I had heard no such criticism.

Secretary FISHER. I am glad to know that that is not correct. It does not make any difference if that is all the complaint amounts to that the administrative function was not wisely exercised. Suppose it amounted to coercion. You could not get that question into court with a team of horses.

Mr. MONDELL. But we could have secured a construction of that language by the court. The act further provided that the question of the coal character of the land should be raised before the time of final proof, or not at all.

Secretary FISHER. That is the effect of it.

Mr. MONDELL. But the practice is not so.

Secretary FISHER. Why not?

Mr. MONDELL. Unless it has become so very recently.

Secretary FISHER. The question raised is not the question of whether the land was coal land at that time. I have not looked into that. The question raised is one of good faith. The question of whether the land is coal land or not, or was not known to be coal land at the time of application for final proof, is not material beside the question of good faith of the entrymen, except in deciding whether he knew it was coal land or not. Suppose it is perfectly clear that we, not knowing it to be coal land at the time of passing proof, were foreclosed. Where it is a question of the good faith of the entrymen, it is proper to find out whether he knew it was coal or not.

Mr. MONDELL. The purpose was to prevent delay in the issuance of patents by reason of the raising of the question of the coal character of the land subsequent to final proof by providing that the question of the coal character of the land shall be determined at the time of final proof.

Secretary FISHER. Suppose that was true, it was a mere administrative order, and he could get a direct ruling on it.

Mr. MONDELL. The entryman under these circumstances comes forward. He has made final proof subsequent to the passage of that act and his patent had been issued, but a year later the department raises the question of the coal character of the land. Now, if we had a statute giving the right of appeal that entryman would have the right to go into court and have determined the question whether he was entitled to a patent. That statute had two purposes, both of which seem to me to be clearly indicated—one of which was to clean up old cases where there was no question of good faith, and the other that for the future all of the questions involved must be settled in the man's presence at the time fixed by the office to submit his final proof, so he may not have these questions hanging over him indefinitely.

Mr. DENNETT. Do you mean that the land office would not have the right to raise the question of fraud if on the proof papers themselves there was no indication that fraud was perpetrated?

Mr. MONDELL. I would not say that.

Mr. DENNETT. We have stood on that ground all along, and we have reserved this right under the act of 1909——

Mr. MONDELL. What I objected to was the refusal to issue patent whether or no there was anything in the record or subsequent to the

record to raise the question of good faith. You raised the question of good faith in all cases by dumping all of them into the Division of Frauds.

Secretary FISHER. Suppose that were true. Suppose it was all true. How could you get these cases into court? The circular calls upon the entryman to elect——

Mr. MONDELL. The contention is that the department did not interpret the law as we who wrote it understood it.

Secretary FISHER. It does not make any difference. If you have gone so far as to practically claim that we can not interfere in this question of bad faith——

Mr. MONDELL (interposing). I have not done so at any time.

Secretary FISHER. I am glad to know that I misunderstood you.

Mr. MONDELL. You have the right to go into the question of good faith at any time.

Secretary FISHER. Even though the evidence established the fact that the land was not known to be coal land at the time of final proof.

Mr. MONDELL. But if the entryman had no means of knowing, and did not know——

Secretary FISHER. It is a question of what we knew—not what he knew.

Mr. MONDELL. The question of good faith is based on what the entryman knew.

Secretary FISHER. And so we had the right to inquire into what he knew at any time?

Mr. MONDELL. Yes, sir.

Secretary FISHER. And that is all this circular means.

Mr. MONDELL. But there is still the intimation that he had better take the other side of the question.

Secretary FISHER. Well, we will investigate for you any particular case. The questions suggested by you could not be decided on appeal. In those matters the courts would not help you one fraction of an inch.

Mr. MONDELL. Of course my idea was that if the court decided that the law was so-and-so it would then be plain to the department, and it would be settled. Now, of course I do not want people to get lands as agricultural lands that are not agricultural lands, and we do not desire unnecessary litigation——

Secretary FISHER (interposing). Therefore you introduce a bill to promote litigation?

Mr. MONDELL. In your opinion, and your opinion on many matters is very excellent. We can not accept it in this.

Secretary FISHER. Do you know how many cases were decided on appeal in the department from June to the first of last month? There were a little over 300 cases, and it would not take a very large percentage of these cases going into the court to tie up pretty nearly all of the Land Office business, because, as you understand, every time a man claimed a misconstruction of the law on the part of the department the department would have to wait until his case was decided. We could not decide other cases involving that question of law at all, and I shudder to think of the condition that the Land Office business would be in.

Mr. MONDELL. I think after we had a few decisions on the leading points that it would materially reduce the number of contested cases.

Secretary FISHER. Don't you think that if we get an opinion from the Attorney General of the United States or from a tribunal in the Interior Department we will get just as good an interpretation of the law as we could from the courts?

Mr. MONDELL. If you could get a tribunal in the Interior Department that would not be influenced by hysterical public opinion, that would simply try to determine what the law is, that would probably be true.

Secretary FISHER. You could get it just as nearly there as anywhere. I assume from what you state that you agree with me that these cases should not be appealed to the circuit courts throughout the country, because, in that event, we would have a number of different rules of construction all over the land. No matter what the advantages might be from such an arrangement, that is a conclusive argument against that proposition, and, therefore, we can not adopt that. The result is that you have got to fix some basis. In the decisions in the department, the construction of the law by the department has been, on the whole, more favorable to the entryman than the decisions of the local courts here have been. As a matter of fact, in every case that has gone to the Supreme Court within the brief period of time that I have been in the Department of the Interior or that have been decided in that court in that period or within any other recent period, the very strictest constructions of the law have been sustained. The decisions there have gone further in literal construction against the entryman than the decisions of the department have gone. I think the practice that has prevailed during the past six months in the department has been much more liberal toward entrymen than it has been in any other period of time. We will take, for instance, the construction of the homestead law, to which I have referred, in which the department construed the act to mean, "shall reside on or cultivate the same for a period of five years." The Supreme Court takes out the word "or," and says, "he shall reside on and cultivate the same for a period of five years." The department construed the words, "the same" to mean, "any part of the same," while the Supreme Court construed it to mean all of the homestead. Now, if an entryman carried to the Supreme Court a case involving that same provision, the court would say that he must cultivate his entry, according to the construction given the law by that court.

Mr. MONDELL. But in such a case as that we could amend the law.

Secretary FISHER. That is true, but I am satisfied that the interpretation given the law by the department was correct. Now, your complaint was against the insinuation in the circular. Now, if you would take the time to prepare a list of the questions arising under the construction of the land laws that you think might properly go into a court on appeal, I venture to say that you could not find a dozen such questions.

Mr. MONDELL. My thought has been at all times that the number of appeals would not be large, and that they would be upon the important controlling points.

Secretary FISHER. That, unfortunately, in my humble judgment, is not true. I have had some little experience in the practice of law,

and my personal judgment is perfectly clear that when you pass a law providing that questions of law can be taken up, you will find that these cases appealed will not be those involving the construction of the law, such as these half dozen principal questions you think will go up on appeal, but you will find that cases will be appealed involving only the question of whether the law in those particular cases has been correctly applied to the facts in those cases, and you will find that every entryman who thinks he has a ghost of a show to win out will go into the court, and out of that 300 cases decided in the Land Office, to which I have referred, there would not be probably more than 10 in which the decision would be different from that of the department.

Mr. MONDELL. I desire to call your attention briefly to this bill which was referred to in Mr. Taylor's letter to you. It is House bill No. 8781. The bill reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act no final proofs on land entries shall be suspended except for good and sufficient reasons under the law; and in every case where action on final proof is thus suspended it shall be the duty of the officer upon whose protest proof was suspended to furnish the register and receiver with his reasons for such suspension, which shall be immediately transmitted to the entryman with notice of suspension and with opportunity to answer the same or ask for hearing, which hearing when demanded shall be promptly had.

Now, this bill was introduced to meet this condition. There is nothing in the regulations to prevent special agents from going into the land offices and, with a rubber stamp or otherwise, marking protested every entry that happens to be on the docket, and we are informed, and everybody who has had any experience in public land matters knows that it has been the practice of certain special agents to mark entries suspended on the merest hearsay or suspicion. There is nothing in the regulations to compel the officer to notify the entryman that his entry is suspended, and he may know nothing about it until he makes inquiry a year or a year and a half later to know why he has not received his patent. Then he will discover that some one at some time has suspended the entry, but for what reason he does not know. He has not been called upon to answer at a hearing, and has not received any notice of the cause of suspension.

Secretary FISHER. That is a defect of administration. I know you will agree with me that as promptly as possible each entryman should be called on for his final proof, and that a definite disposition should be made of his entry as quickly as possible. However, the question as to how much can be given from the reports of the special agents is a question. As you have already stated at different times during this hearing, we have been going through a period of considerable public agitation of all of these questions, and that has naturally led to the tying up of many entries, but I hope we have now gotten to a point where we can go ahead and have the mechinery of the department move on more smoothly. At the same time, we are always confronted with this problem of what to do in the case of a given entry when some one intimates that there is something wrong with it, and when the special agent has reason to suspect that there may be something wrong with it. There is nothing he can do with that case coming to his notice except to stamp it or write out a protest withholding it subject to protest. The real question is how quickly can

we get action on that claim, because as soon as we do get action on it, and as soon as the special agent has finished his investigation and is ready to take the matter up, the entryman is given full information of the charges against his claim, and he has every opportunity to meet them. You complain of the situation in which the entryman is placed before any action has been taken. I do not know of any way to help him. It is not going to do him any good, and it is going to do the department harm, to have the department called upon to specify the reasons. There are cases where conspiracy is charged; the charge is made that there is a conspiracy, and the special agent wants to investigate the charge. Now, shall we stamp that information on the entry and serve notice on the man, so that he can go out and destroy the evidence and get rid of it? The reports of the special agents are always confidential, and ought to be regarded as confidential. We can not give the man the reports of the special agent that ought to be regarded as confidential.

Mr. MONDELL. Do you think it would be objectionable to notify the entryman that his entry has been suspended?

Secretary FISHER. On a charge of conspiracy?

Mr. MONDELL. Well, simply notify him that his entry is suspended if that is as far as you think you should go.

Secretary FISHER. I do not know of any particular objection to having him notified that it has been suspended.

Mr. MONDELL. Well, that would not fully cure the matter; that would not wholly cure it, but that notice would remove a great deal of the ground of complaint of the entrymen who do not know anything about the suspension.

Secretary FISHER. I do not know of any particular objection to notifying the entryman that his claim is suspended.

Mr. DENNETT. That would involve that same proposition of conspiracy. If the ground of suspension was conspiracy and the entrymen were notified that his claim was suspended, his mind, which would be a guilty mind, would immediately fly to the reason of suspension, and it would be in effect a notice of the grounds. He would immediately take steps and precautions for his own protection and destroy the evidence.

Mr. MONDELL. Do you not see the temptation you place before the special agent?

Secretary FISHER. Yes, sir; I see that, and I am modifying that. For instance, I am issuing an order that all cases must be reported on within a year that may be in the hands of the special agents, and if delayed beyond that they must report the reasons for failure to comply with the order. There is a suggestion which has been repeatedly made by Mr. Dennett that I think would be of far greater benefit to you on this point and all along the line than anything else, and I would like to know why it would not be advisable to have this proof taken on the land. If we could get a law under which the proof could be taken on the land there would be fewer of these questions of delay and fewer instances in which the entrymen would have to get the witnesses and take them off to the land offices or the special agents' offices. I think that would simplify the whole thing, and that there would be fewer cases suspended than now. What possible objection is there to a bill of that kind?

The ACTING CHAIRMAN. I think the main objection is that it would almost necessarily involve the creation of some new offices.

Mr. DENNETT. You would get rid of a great many special agents.

Secretary FISHER. To get rid of a lot of special agents——

The ACTING SECRETARY. It seems to me that if there would be enough special agents eliminated, that would be an inducement.

Mr. DENNETT. It would be a self-supporting proposition. I do not think there is any question about that. In my judgment, it would be self-supporting. I do not think there is any question about it. The agent could take about 225 in the course of the year; that is, in the ordinary prairie—open country. Of course in a wooded country he could not handle that amount. The fee of the homesteader would be $20, and that would be very much less than the expense now incurred by the homesteader in bringing his witnesses to the local land offices. Fixing the fee at $20 would bring $4,500 for the work of the agent, and the agent will be paid, say, $2,000, and he would be allowed $3 per day for expenses, so that you would figure on about $3,000. That would leave $1,500 for traveling expenses, and that, I think, would meet the expense. That is a rough calculation. I think, in the event such a provision should be made, that the Secretary of the Interior ought to be given authority to install the system gradually, and not all over the United States at one time. He should be given authority to install it in different districts, and in that way he would get the benefit of the experiments made in some given area. I think the plan is perfectly feasible. The agent would pass over the homestead and could see for himself whether the regulations had been complied with. He would know the facts absolutely and, as I say, many of them from his personal observation.

Secretary FISHER. It would insure certainty as to residence and cultivation.

Mr. DENNETT. Yes, sir; and it would greatly simplify the work of the General Land Office, as well as the work of the local service, and would also obviate delay. It is from the homesteaders that we have the most complaint.

Mr. MONDELL. Of course there are some arguments in favor of that plan, and perhaps it could be worked out advantageously, but at best it would take some time, if we could see our way clear to adopt it, to get the plan in operation. In the meantime we have this situation before us: The special agent, like the balance of us, is human. The special agent may not care to have all of the business closed up or closed up to an extent that would put him out of business. Congress several years ago very largely increased the appropriation for special agents. For a great many years, when we had much more public domain than now, and when we had the forest reserves, the appropriation for special agents was along about $200,000 annually. It was raised to $500,000, then to $750,000, and then, I think, to $1,000,000.

Mr. DENNETT. I think it is from $500,000 to $1,000,000.

Mr. MONDELL. At any rate, it has climbed to a million, with the assurance that that amount of expenditure would in a very short time clear up the cases and bring the work current. This is what happened—the larger the appropriation the larger the number of cases made—which leads to one of two conclusions, either that the people, in view of the larger appropriations to the special agents,

are more careless about complying with the law and are, to a very great extent, defying its provisions, or that the special agents are making a larger number of cases out of the same conditions that existed prior to the increased appropriation. Those of us who live in the West do not believe that the entrymen are less careful about complying with the laws than they were before. We know, in fact, that the reverse is the rule. As a matter of fact, the law is complied with much better than it was years ago, and therefore there ought to be fewer cases. Yet the number of cases increases, and how easy it is to make cases when all that is necessary for the special agent to do is to go into the land office with a rubber stamp and mark them protested. He can mark these cases protested and say they require investigation, and it does not matter whether there is any foundation for that or not. It makes not a particle of difference whether there is any sort of foundation for the suspicion under which they are being stamped. They must all be ground through the department, and all of them bring grist to the mill of the special agent, every one of them. All of them delay the issuance of patent. The examination of the cases consumes time and costs money. Very few of them are ever held to have any substantial basis, because most of the cases eventually are clear listed.

Mr. SHERIDAN. Would you care to have the facts on that matter?

Mr. MONDELL. I am confining myself to the facts. Is there not some way whereby these men shall have some check placed upon their almost unlimited power to cast suspicion on entries?

Mr. DENNETT. There is a way, and just now we put a check on them, but the special agent has an important duty to perform. During the time to which you referred, when the appropriation was only $100,000, fraud ran rampant. I never realized until I began to investigate these matters how rampant the fraud had been. In my own State, and I lived in a locality in which the land was valuable for agricultural purposes, and, in consequence, there was a stricter compliance with the law, because of the fear of contest, than in many other parts of the country, but anyone traveling through that country could see some of the most flagrant abuses in the way of noncompliance with the law that you could imagine. You take the cases arising under the commutation powers of the homestead law, and I venture to state that from the investigations made in the timbered country 85 per cent were fraudulent.

These cases that have been referred to in the hands of the special agents include more than the homestead cases. To-day the special agents look after Carey Act investigations, and I have known of instances where, because of poor investigations made in the first place, great hardship was caused by reason of the segregation. You may remember where segregations were made in your own State and there was a great deal of delay. Not only that, but take the State locations. In the State of Colorado to-day the State is locating coal lands that they have no right to retain.

Mr. MONDELL. There is no question but what they are entitled to the grants in peace if the coal character of the lands was not raised before the time of the grant.

Mr. DENNETT. Before the time of the grant; you are absolutely correct. But would you absolutely advocate the proposition that they should not be investigated at the time of the grant? That is the very

question we are making through our special agents. These lands should have been properly segregated. In fact, there is much more careful work done now than before. Railroad grants passed to the railroads, and at the time of the passage it was not known that they were valuable mineral lands, and it is a serious question whether we can recover them again.

Mr. MONDELL. What we complain of is simply this, and it comes to us through correspondence with our constituents, and it comes within our own knowledge through inquiry made in our district: That a great many cases are reported for investigation on mere rumor, or possibly no rumor at all. There is nothing in the world to prevent the special agents from protesting every entry in a local land office. There are cases in which a man may have a little trouble with his neighbors and might make a general complaint against all the entries in his neighborhood.

Mr. DENNETT. Cases like that may arise; but when a letter of that kind goes to the special agent, who frequently resides 300 miles away from the place, how is he to know that the complaint is merely due to a quarrel in the neighborhood?

Mr. MONDELL. At any event, he should be at least notified. How is he to find it out?

Mr. SHERIDAN. He generally finds it out by communicating with the local man or the chief of the field division.

Mr. MONDELL. But the entryman on the public domain can not spend his time running to the land office to see what the record shows with regard to his entry. The land office may be from 50 to 100 miles away.

Mr. MARTIN of South Dakota. Is there any good reason, in the administration of the land service, why the entryman can not be notified of the protest, whether it is a conspiracy case or any other case? Why not give him a notice and save him the necessity of going to the land office to find out?

Secretary FISHER. It is not contended, as I understand it, that he should be told of the ground of the protest, but merely notified of the reason for the delay—that is, that his entry is under protest. If you assign the reason or give the entire reasons you immediately give the case away; and if you should notify him in some cases and not in others he would understand at once the significance of it.

Mr. DENNETT. In cases of conspiracy, I am free to admit that I would rather the man would not know that the case was under investigation at all.

Mr. MARTIN of South Dakota. What percentage of the protests filed under the homestead law develop into cases of conspiracy?

Mr. SHERIDAN. From 80 to 85 per cent.

Mr. MONDELL. Will you furnish a statement showing the number of cases that fall in that class—that is, conspiracy cases?

Mr. DENNETT. I will furnish it, but I will have to telegraph the officers for the data.

Mr. SHERIDAN. They will average 85 per cent.

Mr. MARTIN of South Dakota. What percentage of all the cases brought against entrymen result in convictions?

Mr. SHERIDAN. Do you mean cases of every kind?

Mr. MARTIN of South Dakota. Yes, sir; of every kind.

Mr. SHERIDAN. That would be impossible to state without looking up every kind of investigation. My recollection is that in times past, of all entries investigated, all the way from 8 per cent to 12 per cent or 13 per cent have resulted in cancellation.

Mr. VOLSTEAD. Let me suggest this as a possible solution of the difficulty: Suppose you provide that in this case where the person charged with any criminal act no notice be given to him?

Mr. DENNETT. And state the grounds?

Mr. VOLSTEAD. Well, state the grounds if not based upon any charge of a criminal nature.

Mr. DENNETT. As I stated before, I do not think it would be well to put them on notice of the grounds of the protest.

Mr. SHERIDAN. These complaints come in to the field officers and the agent goes out to make investigations when he thinks there is sufficient grounds to warrant an investigation. Facts may be called to his attention that can only be developed by the passage of time, and it would not be wise to make a charge upon information furnished until the passage of time and the matter is developed. The statistics show that 28 per cent of the cases protested are cases referred to the field division throughout the country and result in compliance with the law; 60 per cent result in cases that, under the regulations, go to the General Land Office for further investigation; 12 per cent are originated by the field service—that is, by the special agents. Now, the field agents go out to make their investigations and something else is frequently called to their attention. Many of these cases are called to their attention while they are in the field.

The views of the Secretary of the Interior on the matter of amending the reclamation law are set out in bill introduced by Mr. Taylor of Colorado, which is as follows:

[H. R. 20490, Sixty-second Congress, second session.]

A BILL To amend the reclamation law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That public lands withdrawn under the second form prescribed by section three of the reclamation act, approved June seventeenth, nineteen hundred and two (volume thirty-two, Statutes at Large, page three hundred and eighty-eight), may hereafter be taken up only by entries made under this act, hereinafter called "reclamation entries." In opening to entry such lands the Secretary of the Interior may prescribe regulations concerning the time and manner in which such lands may be settled upon, occupied, or entered by persons entitled to make entry thereof, the payments or deposits to be made by applicants, and the conditions under which the payments or any part thereof may be forefeited for failure to make entry or under which they may be refunded: *Provided*, That the fees and commissions to be paid on account of reclamation entries shall be the same as are now required by law for homestead entries.

SEC. 2. That permanent right to the use, for lands in private ownership, of water from works constructed under said act and acts supplementary thereto or amendatory thereof may hereafter be acquired only by purchase under this act or under the provisions of the act entitled "An act to authorize the Government to contract for impounding, storing, and carriage of water, and to cooperate in the construction and use of reservoirs and canals under reclamation projects, and for other purposes," approved February twenty-first, nineteen hunded and eleven. Each tract of private land for which a water-right purchase is or may be made under this act shall be known as a "reclamation holding."

SEC. 3. That the Secretary of the Interior shall fix, as prescribed by section four of the said reclamation act, the limits for each recalmation entry on

public lands, and for each reclamation holding of private lands, at such areas, not in any case exceeding one hundred and sixty acres, as in his opinion may in each case be reasonable for the support of a family on said entry or holding. The tracts so limited for reclamation entries shall be known as "farm units." No person shall under this act make more than one reclamation entry, nor purchase a water right for more than one reclamation holding, nor shall any one person both make a reclamation entry and purchase a water right for a reclamation holding.

SEC. 4. That no purchase under this act of a water right for a reclamation holding shall be made except upon the express condition that the United States and its successors in the control of the project, in consideration of such sale, shall have a lien on the reclamation holding superior to all other claims and demands whatsoever attaching thereto, after the filing of application to purchase water right, for all amounts then due and thereafter to become due on account of such water right, plus the costs of enforcing such lien, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land or occupant thereof residing in the neighborhood.

SEC. 5. That every entryman of a "reclamation entry" shall have the qualifications now prescribed by law for homestead entrymen: *Provided*, That hereafter, in the administration of the homestead law, a reclamation entry shall be deemed and taken to be equivalent to a homestead entry of one hundred and sixty acres; and every such reclamation entryman shall, within two years from the date of his entry, build or require a habitable house on his farm unit and establish a residence thereon; and shall actually reside thereon for the period of three years beginning at the expiration of the two years aforesaid. Every such reclamation entryman and every purchaser of a water right for a reclamation holding shall progressively reclaim and cultivate, to the satisfaction of the Secretary of the Interior, the irrigable area of his farm unit or reclamation holding, as determined by or under the authority of such Secretary, in such time and manner that there shall be so reclaimed and cultivated not less than one-eighth of such irrigable area during the first year after the date of his entry or of approval of his water-right application, two-eighths during the second year, three-eighths during the third year, four-eighths during the fourth year, and five-eighths during the fifth year, and thereafter until patent or final water-right certificate shall issue; but in no case shall the portion of the total irrigable area so reclaimed and cultivated be less than five acres in the first year, ten in the second year, fifteen in the third year, twenty in the fourth year, twenty-five in the fifth year and thereafter until patent or water-right certificate shall have issued, proper deductions in the discretion of the Secretary of the Interior being made for buildings, yards, and other like purposes: *Provided*, That if the entire irrigable area (less deductions as aforesaid) shall have been so reclaimed and cultivated before the fifth year such reclamation and cultivation of such entire area shall continue until patent or final water-right application shall have issued as aforesaid: *Provided further*, That clearing and breaking the ground during the first year of cultivation of any portion of the tract, without the sowing or harvesting of any crop, and that the planting and proper care of orchards in any year, shall be considered cultivation within the meaning of this section.

SEC. 6. That every such entryman or purchaser of a permanent water right for a reclamation holding, within six years after date of his entry or approval of his application to purchase, or within such further time as the Secretary of the Interior may fix for good cause shown, shall make, to the satisfaction of the Secretary of the Interior, due proof of compliance with all the requirements of this act as to residence, improvements, reclamation, and cultivation, and may receive a certificate that such proof is satisfactory. After such proof is made and upon payment of all amounts, with interest, then due on account of his entry or purchase for building, operation, and maintenance, including drainage, if the amounts then and theretofore so paid on account of the building charge shall be not less than one-half thereof, patent or final water-right certificate shall issue to such entryman or water-right purchaser, with reservation of a lien as hereinafter specified. A failure by any such entryman or purchaser, before such patent or certificate of water-right purchase shall have been earned, to comply with the requirements of this act as to residence, improvement, reclamation, or cultivation, shall render the entry and water-right application subject to cancellation, with the forfeiture of all moneys paid thereon and of all rights with respect thereto.

SEC. 7. That every patent and water-right certificate issued under this act shall expressly reserve to the United States a lien on the land patented for which a water right is certified, superior to all other claims and demands whatsoever attaching to such land after the making of the entry for the farm unit or the filing of the application to purchase such water right for the reclamation holding, for all amounts then due and thereafter to become due to the United States or its successors in the control of the project under this act on account of such entry or water right. Upon default of payment of any amount so due, title to the land shall pass to the United States free of all incumbrance subsequent to the entry of the farm unit or the application to purchase water right for the reclamation holding, subject to the right of the defaulting debtor to redeem the land within six months after the default shall have been adjudged by payment of all moneys due, with interest as hereinafter provided, and costs; and the United States may, at its option, cause the land to be sold at any time after such default is adjudged, and from the proceeds of the sale there shall be paid into the reclamation fund all moneys due, with interest as hereinafter provided, and costs. The balance of the proceeds, if any, shall be the property of the defaulting debtor: *Provided*, That in case of a sale after default under this section the United States shall be authorized to bid in such land at not more than the amount in default, including interest and costs. Land acquired by the United States under this section may be opened to entry, in the discretion of the Secretary of the Interior. Jurisdiction of suits by the United States for the enforcement of the provisions of this section by foreclosure or otherwise is hereby conferred upon the United States district court for the district wherein the land or any part thereof lies.

SEC. 8. That the Secretary of the Interior shall cause a record to be kept at some convenient place or places within the limits of or convenient to each reclamation project, so long as the United States shall continue to operate the reclamation works, showing, for the information of the public, the amount due at any time on account of any entry made or water right purchased under this act, and he shall provide for furnishing copies of such records, or of portions thereof, duly authenticated under seal by designated employees of the Reclamation Service, and for charging and collecting fees for such copies. Copies so authenticated shall be admissible in evidence in like manner and to the same extent as copies authenticated under section eight hundred and eighty-two of the Revised Statutes.

SEC. 9. That all moneys now or hereafter due to the United States in connection with any operations under the reclamation act and acts supplementary thereto or amendatory thereof, including this act, shall be paid to such officer or employee of the United States as the Secretary of the Interior may prescribe. Hereafter in determining the charges to be made per acre with a view of returning to the reclamation fund the estimated cost of construction of any project, and the number and amount of annual installments, not exceeding ten, in which such charges shall be paid, interest at six per centum per annum from the day when the first installment on account of any farm unit or reclamation holding is due to the day when each subsequent installment on account thereof is due shall be reckoned by the Secretary of the Interior as a part of the cost of construction. And the Secretary of the Interior shall, by regulation or otherwise, provide for allowing a discount at said rate of six per centum for cash payments of any installments after the first in advance of the date when the same shall be due, but no contract heretofore duly made by the Secretary of the Interior with any landowner or association shall be hereby affected without the consent of such landowner or association, and no installment or charge heretofore liquidated and fixed by public notice or otherwise under the said acts or either of them shall bear interest before the same shall be due, nor be allowed a discount for payment in advance by virtue of this section, unless the same shall have been readjusted with the consent of the entryman or water-right purchaser as hereinafter provided. All moneys received from the above sources shall be paid into the reclamation fund. Upon all charges or installments or portions thereof due and unpaid, interest at eight per centum per annum from the date when such charges or installments are due, respectively, shall be paid as a part thereof. A failure to pay when due, with interest thereon as aforesaid, any two installments or the final installment shall render the entry and the appurtenant water-right application, or the water-right application or final water-right certificate for a reclamation holding, as the case may be, subject to cancellation by or under the authority of the Secretary of

the Interior, with the forfeiture of all rights thereunder, as well as of all moneys theretofore paid thereon, and the Secretary may, in his discretion, enforce such other remedies as may be applicable. No right to the use of water shall permanently attach until patent or water-right certificate shall have been earned under this act after full compliance with all the requirements made hereby as conditions precedent thereto.

SEC. 10. That entries and water-right applications heretofore made under the said reclamation act and acts supplementary thereto or amendatory thereof, including desert-land entries made subject thereto in pursuance of section five of the act of June twenty-seventh, nineteen hundred and six (volume thirty-four, Statutes at Large, page five hundred and nineteen), upon which patents or water-right certificates have not yet been issued, may, upon the request of the entrymen or applicants, be made subject to this act by and at the discretion of the Secretary of the Interior, who shall in such case equitably readjust the unpaid installments of charges for building, operation and maintenance, and drainage, in conformity with the provisions of this act, reckoning interest for that purpose at six per centum per annum.

SEC. 11. That the Secretary of the Interior is hereby authorized to make all needful rules and regulations and to do and perform all things necessary or proper to the execution of this act.

SEC. 12. That all acts and parts of acts inconsistent with this act are hereby repealed.

Mr. MONDELL. I think that at least the entryman is entitled to notice that his entry is under protest, and he ought to know promptly the reasons therefor.

Thereupon, at 2.15 o'clock p. m., the committee adjourned.